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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1962

No. 59

A. J. SIMLER, PETITIONER,

vs.

LESLIE L. CONNER.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR CERTIORARI FILED DECEMBER 29, 1961
CERTIORARI GRANTED JANUARY 15, 1962

SUPREME COURT OF THE UNITED STATES

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[fol. 1] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

No. 8008 Civil

A. J. SIMLER, Plaintiff,

vs.

LESLIE L. CONNER, Defendant.

COMPLAINT—Filed April 24, 1958

Comes now the above named plaintiff and shows to this Honorable Court:

1. That he is a resident, citizen and inhabitant of the State of Arkansas residing in North Little Rock, Arkansas. That the defendant herein is a resident, citizen and inhabitant of Oklahoma County, State of Oklahoma, and that there is in controversy herein a sum in excess of $3,000.00, and by virtue thereof, this Court has jurisdiction herein.

2. This plaintiff further shows that this is an action for a declaratory judgment pursuant to 28 U.S.C. Art. 2201 for the purpose of determining questions of actual controversy between the parties as hereinafter more fully appears.

3. This plaintiff shows to this Honorable Court that heretofore and on or about the ..... day of July, 1952 this plaintiff herein employed the defendant, who is an attorney at law and who was at such time a duly licensed and practicing attorney, to represent this plaintiff in certain litigation in the contest of a will made by one, Birdine Fletcher, and in adjudicating the rights of this plaintiff in and to said estate, and that at such time this plaintiff and said defendant agreed that this plaintiff would pay to the said defendant a reasonable sum for his attorney's

fees in the handling of said matter for and on behalf of said plaintiff herein as his attorney.

[fol. 2] 4. That said attorney and this plaintiff conducted litigation concerning said matter through the Supreme Court of the State of Oklahoma on two different occasions and through the United States District Court at various times, with all of which the defendant is familiar, and in the United States Court of Appeals, Tenth Circuit, and the United States Supreme Court, and that said litigation has now been settled.

5. That the said defendant herein employed one, James E. Grigsby as an attorney to assist the said defendant and agreed to pay the said James E. Grigsby 28% of the attorney's fees which would be due to the said defendant as such attorney. That the said defendant, Leslie L. Conner, also employed Phil E. Daugherty, another attorney, to assist the said defendant in said litigation and agreed to pay said Phil E. Daugherty for his services out of such compensation as the defendant would be entitled to in said cause.

6. This plaintiff further shows to this Honorable Court that one, Arnold Britton, was associated with the said Leslie L. Conner in his office at such time and that the said Leslie L. Conner was liable to the said Arnold Britton, if anyone was liable to him for any fees to which Arnold Britton would be entitled to, but thi plaintiff shows that his contract of employment was with the said Leslie L. Conner.

7. This plaintiff shows that after said litigation had been carried on through the various courts, the said James E. Grigsby demanded an attorney's fee and filed suit in the United States District Court for the Western District of Oklahoma against this plaintiff and caused said property to be attached and oil runs withheld, and that this plaintiff was forced to and did employ John B. Ogden as his attorney to represent him in such matter and to represent him in other matters connected with said estate and protecting the rights of this plaintiff.

[fol. 3] 8. This plaintiff shows to this Honorable Court that he has paid out the following amounts as attorneys fees:

(a) The sum of $46,000.00 to Fred Suits, Mary Weiss and the firm of Dudley, Dudley & Dudley, which sum was paid on order of the County Court of Oklahoma County, Oklahoma, such sum being paid to said attorneys for representing the executor of said estate of Birdine Fletcher, deceased, who was the sister of this plaintiff.

(b) That in addition thereto, he has paid to Leslie L. Conner the sum of $24,000.00.

(c) That he has paid to James E. Grigsby, one of the attorneys employed by the said Leslie L. Conner, the sum of $12,800.00.

(d) That he has paid to John B. Ogden, the attorney employed by this plaintiff, the sum of $7,500.00.

That he has paid a total of $90,300.00 for attorney's fees.

9. This plaintiff now shows to this Honorable Court that the defendant, Leslie L. Conner, is claiming against this plaintiff additional attorney's fees in excess of $3,000.00, and that this plaintiff is entitled to have this Court determine said controversy between this plaintiff and the said Leslie L. Conner, and determine whether or not the said Leslie L. Conner is entitled to any additional fees, and if so, what amount.

Wherefore, this plaintiff prays that this Court adjudge whether or not this plaintiff is indebted to the defendant in any sum or sums whatsoever, and if so, to what extent or what amount, for costs of this action, and for such other and further relief as may appear to this Court just, right and proper in the premises.

John B. Ogden, Attorney for Plaintiff, 1408-9 Liberty Bank Building, Oklahoma City, Oklahoma.

DEMAND FOR JURY TRIAL

Comes now the above named plaintiff and hereby demands and requests a jury trial of this cause. Dated this the 24th day of April, 1958.

John B. Ogden, Attorney for Plaintiff.

[fol. 5] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

No. 8008—Civil

[Title omitted]

AMENDMENT TO COMPLAINT—Filed August 18, 1958

Comes now the plaintiff and in compliance with the Order of this Court entered on August 1, 1958, wherein the Court sustained the defendant's motion for more definite statement, this plaintiff in compliance with the Order of the Court hereby amends the complaint filed herein, and shows that on or about the 18th day of July, 1952 the defendant was employed as alleged in paragraph 3 of the complaint, and that at said time and as evidence of said employment, Leslie L. Conner, the defendant herein, prepared in his office a letter dated July 18, 1952, which letter is in words and figures as follows, to-wit:

"Mr. Leslie L. Conner, Atty.,
410-414 Hightower bldg.,
Oklahoma City, Oklahoma.

Dear Sir:—

Re: Birdine Fletcher Estate.
County Court Oklahoma County, Oklahoma.

This confirms our employment of your self and law firm to represent us in the matter of the Estate of Birdine Fletcher, deceased, now pending in the County Court of Oklahoma County, Oklahoma, wherein certain people have filed petition to probate an alleged will supposed to be signed by her.

We agree to pay all the witness fees, court costs, furnish all bonds, purchase copy of all records from court

reporters prepare the evidence and pay all necessary bills to contest the admission of this will to probate because we do not believe it is a valid will. We understand that this will run in the approximate neighborhood of $1,000.00.

[fol. 6] We also agree to pay you and your firm a reasonable attorneys fee for the services rendered and to be rendered in this case in the County Court, and if necessary in the District Court and if necessary in the Supreme Court of the State of Oklahoma, which fee may be set by the County Court or any other court, if the matter is successful either by trial or judgment or compromise.

If the matter is not won, compromised or settled you are not to charge us a fee.

Yours truly,

/s/ A. J. SIMLER,
A. J. Simler, for himself
and his children."

That although the defendant Leslie L. Conner did not sign said letter, he prepared the same and requested and directed the plaintiff herein to sign the same, thereby employing the said defendant as plaintiff's attorney and at that time the defendant Leslie L. Conner became and was the attorney of the plaintiff herein, A. J. Simler, and the relationship of attorney and client thereby and thereafter existed. That thereafter the said Leslie L. Conner did represent the said plaintiff in said matter therein referred to, and that the said Leslie L. Conner employed James E. Grigsby, the attorney mentioned in the complaint herein as pled in paragraph 5 of the original complaint, and also employed the said Phil E. Daugherty as heretofore pled.

Wherefore, plaintiff prays for judgment as in his original complaint set out herein.

John B. Ogden, Attorney for Plaintiff, 1408-9 Liberty Bank Building, Oklahoma City, Oklahoma.

Certificate of Service (omitted in printing).

[fol. 28] [File endorsement omitted]

[fol. 29]

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

Case No. 8008 Civil

[Title omitted]

ANSWER AND COUNTERCLAIM—Filed September 23, 1958

The defendant, Leslie L. Conner, for Answer to the Complaint and Amendment to the Complaint states:

—1—

The Complaint and Amendment fail to state a claim against Defendant upon which relief can be granted and Defendant moves the Court to dismiss the complaint.

—2—

Defendant admits the allegation in paragraph one of the Complaint.

—3—

Defendant denies the allegation contained in paragraph two of the Complaint.

—4—

As to paragraph three defendant admits that he is a lawyer, licensed to and has been admitted to practice of [fol. 30] law for the past thirty-three years and is admitted to practice before the Supreme Court of the United States: The Court of Appeals: Tenth Circuit: The Supreme Court of the State of Oklahoma and all Federal District Courts in Oklahoma and other bureaus and commissions.

Defendant, Leslie L. Conner admits that the Plaintiff, Mr. A. J. Simler, employed him on a written contingent fee contract, when Mr. A. J. Simler had been *"left $1.00 and no more"* in a Will signed by his sister, Birdine Fletcher. That defendant accepted such employment on a contingent fee contract, copies of which are attached hereto as exhibits of Leslie L. Conner, defendant, and Counterclaimant.

That Plaintiff and Defendant on September 25, 1952, because of other proposed litigation agreed on clarification of the word "reasonable fee" in said contingent fee contract of July 15, 1952. The litigation was continuous and was carried through the County Court, District Court and Supreme Court of Oklahoma; the Federal Courts in Oklahoma; and through the Court of Appeals, Tenth Circuit; and was three times appealed to the Supreme Court of the United States. During all this litigation Plaintiff was represented by this defendant, Leslie L. Conner, under his contingent fee agreement with plaintiff Mr. A. J. Simler, to be his lawyer in all this litigation and has ended by defendant, Leslie L. Conner, winning for Mr. A. J. Simler, the plaintiff a 160 acre oil producing farm with all minerals and mineral rights located in the Cement Field and described as:

> [fol. 31] NW¼ of Section 34 in Township 6 North Range 10 West of the I. M. in Caddo, County, Oklahoma.

which is producing oil at the rate of over $3500.00 per month as the landowners share.

—5—

Defendant admits the allegation contained in paragraph four of the Complaint and states in addition thereto that said litigation began in July 1952 with the Contest of the Will and ended in 1957 when Mr. A. J. Simler, plaintiff was paid over $65,635.09 in oil runs by W. H. Wilson, Executor of the Estate of Birdine Fletcher, deceased; which was recovered as a direct result of the legal services and judgments obtained in favor of Mr. A. J. Simler, the plaintiff and against the representative of his sisters estate.

—6—

As to paragraph five defendant admits that he employed two other attorneys to assist him in said cause and that one of them was Mr. James E. Grigsby on a 16⅔ contingent fee contract, payable out of the Fifty percent contingent fee contract signed by Mr. A. J. Simler, plaintiff,

herein, which was done with knowledge and the consent of the Plaintiff and later that contract was increased by defendant, Leslie L. Conner, from 16% to 28% and after working two years in the litigation the said Mr. James E. Grigsby quit and did not complete his agreement with this defendant but thereafter and in May, 1957, out of the [fol. 32] "oil runs" the said plaintiff was reimbursed for this payment to James E. Grigsby. Defendant employed Phil E. Daugherty to assist him in the case on a contingent fee agreement payable out of defendant's, Leslie L. Conner, fifty percent contract and he was worked continously in the case with this defendant.

—7—

As to paragraph six defendant admits that Mr. Arnold B. Britton was an employee in his office working for defendant on a salary and that the legal services he performed in the "Simler Cases", he performed as an employee of this defendant and he was paid for all his work therein prior to March 1956 when he voluntarily left the employment of this defendant.

—8—

As to paragraph seven defendant admits that James E. Grigsby filed suits in the District Court against Mr. A. J. Simler and this defendant, Leslie L. Conner, in an attempt to get his fee before the litigation was completed and that plaintiff, Mr. A. J. Simler, did settle with Mr. James E. Grigsby which settlement was made without the knowledge, consent or approval of this defendant.

—9—

As to paragraph eight defendant admits that plaintiff, Mr. A. J. Simler, after receiving over $65,639.09 as a direct result of over 5 years legal work of his attorney this defendant, Leslie L. Conner, he paid to defendant, Leslie L. Conner, $24,000.00 all as per written agreements [fol. 33] made between the parties copies of which are attached hereto, out of which defendant paid amounts to other attorneys who assisted him and for additional cost

that he had paid which left a part of the above sum for a part of his services. Defendant denies all other allegations of the Complaint.

ANSWER TO AMENDMENT TO COMPLAINT

For answer to the Amendment to the Complaint defendant states:

—1—

Defendant admits that the parties entered into a contract of employment as therein alleged and thereafter defined and clarified the meaning of the word "reasonable contingent fee" which was all agreeable and agreed to by Mr. A. J. Simler, this plaintiff and Leslie L. Conner, this defendant, that from July 1952, to the time the case was won and the property and farm was recovered Leslie L. Conner this defendant was the lawyer for the plaintiff, Mr. A. J. Simler.

—2—

Defendant denies that A. J. Simler, the plaintiff paid any sums to Mr. Fred Suits, Miss Mary Weiss, or Messrs. Dudley, Dudley and Dudley but alleges any sums so paid by Mr. W. H. Wilson the duly appointed, qualified and acting Executor (who was appointed by Birdine Fletcher, sister of the plaintiff) of the Last Will and Testament of Birdine Fletcher, deceased by County Court order in case No. 31726, as Estate expenses.

[fol. 34] —3—

Leslie L. Conner, defendant states that he has performed his contingent fee contract and he is demanding that Mr. A. J. Simler, the plaintiff perform his agreement and transfer to this defendant one-half of all sums and things of value recovered for him in this five year litigation all as agreed in writing between plaintiff and defendant in 1952 when plaintiff had been given *"$1.00 and no more"* in the Will of Birdine Fletcher and he employed plaintiff to try to obtain back from the "legatees named therein" the

amounts his sister had given them in her will. Defendant denies the other allegations in the Amendment to the Complaint.

Wherefore Defendant Leslie L. Conner, having fully answered the Complaint and Amendment prays that plaintiff Mr. A. J. Simler, take nothing by this action and that the Complaint be dismissed and he have the judgment and the relief prayed for in his Counterclaim.

[fol. 35]

COUNTERCLAIM OF DEFENDANT LESLIE L. CONNER

Leslie L. Conner, defendant, for cause of action in this Counterclaim against plaintiff, Mr. A. J. Simler, alleges and states:

—1—

Jurisdiction is founded on diversity of citizenship and amount. Plaintiff Mr. A. J. Simler is a citizen and resident of the State of Arkansas and defendant and Counterclaimant, Leslie L. Conner, is a citizen and resident of the State of Oklahoma and the amount in controversy exceeds the sum of Ten Thousand dollars exclusive of interest and costs.

—2—

That plaintiff employed defendant and Counterclaimant as his lawyer to represent him in a contingent fee attorneys contract on July 18, 1952, and later on September 25, 1952, plaintiff and defendant clarified the terms of that contingent fee contract by an agreement in writing providing for a scale of contingent fees to be paid defendant on the settling of the case, or trials or appeals thereof: That defendant and counterclaimant has performed his contract and plaintiff herein refuses to perform his agreement for division of the property recovered for him by this defendant and counterclaimant growing out of the litigation involving the following facts in the following cases and appeals, as shown by the allegation and the attached exhibits.

[fol. 36] —3—

That John W. Fletcher was the owner and in possession of the 160 acres farm and property described as NW ¼ of Section 34 in Township 6 North, Range 10 West of the I. M. in Caddo County, Oklahoma. He had married Birdine Simler, who was a sister of the plaintiff, A. J. Simler, and both now live in Oklahoma City, Oklahoma. Plaintiff lived in Arkansas and was the only heir at law of his sister, Birdine Fletcher. That the farm was producing oil and had been for many years, being located in the rich Cement Field of Caddo County, Oklahoma. That plaintiff, Mr. A. J. Simler, in an effort to obtain control of the 160 acre oil producing farm did on October 2, 1950, file a petition in the County Court of Oklahoma County, seeking to be appointed Guardian of Mrs. Birdine Fletcher, his sister and John W. Fletcher, his brother-in-law, (copies of his verified petition in Case No. 29063 County Court of Oklahoma are attached as Exhibits 1 and 2 as part of this Counterclaim). Upon hearing the Court appointed another Guardian and later Mr. John W. Fletcher died and Mrs. Fletcher, sister of plaintiff was restored to legal capacity and her Guardianship ended and she was appointed Administratrix of his Estate and as they had no children she inherited and took possession of the Caddo County farm.

—4—

Birdine Fletcher, sister of plaintiff then, had prepared and she signed her Last Will and Testament, dated July 9, [fol. 37] 1952, in which she made at least 19 bequests of money to others and in which she willed to the plaintiff Mr. A. J. Simler, her only remaining brother and sole and only heir at law the following:

> "I will and bequeath to my brother A. J. Simler of Little Rock, Arkansas, the sum of one ($1.00) this amount and no more."

all as shown by a copy of her will hereto attached and made a part hereof as Exhibit 3. Birdine Fletcher died on July 13, 1952, and on July 18, 1952, Mr. A. J. Simler employed Leslie L. Conner, as his Lawyer to represent on a con-

tingent fee contract to contest the Fletcher will and to prevent probate thereof. A copy of that agreement of July 18, 1952, is attached as Exhibit 4 and made a part hereof.

—5—

Thereafter on July 30, 1952, plaintiff directed the filing of the first contest and began a part of the litigation. Copy of that direction is attached as Exhibit 5.

—6—

Thereafter a new theory of law and procedure was discovered by defendant and counterclaimant, Leslie L. Conner and the proposed Federal Court litigation was discussed and by mutual agreement and for the mutual benefit of both parties, the plaintiff, Mr. A. J. Simler, and defendant and counterclaimant, Leslie L. Conner herein agreed in writing on September 25, 1952, on a clarification of the [fol. 38] meaning of the term "reasonable fee" as used in the agreement of July 18, 1952, said agreement of September 25, 1952 being as follows:

"Mr. Leslie L. Conner
Conner Hilpirt & Britton
Attorneys and Counselors at Law
410-414 Hightower Building
Oklahoma City, Oklahoma

Dear Sir:

With reference to my letter of July 18, 1952, employing your firm in the Fletcher Will and Estate Contest, I agree that the reasonable fee is:

25% of the amount recovered if settled without trial.

33⅓% of the amount recovered if case is tried in County and District Court.

50% of the amount recovered if the case is appealed to the Supreme Court.

I understand that all expenses, taxes and costs are to be deducted first.

This is a contingent fee and if nothing is recovered, no fee is to be paid.

If anything is recovered or settled, I agree to pay you the above fees.

Yours truly,

/s/ A. J. SIMLER"

Copy of which is attached hereto as Exhibit 6 and made a part hereof.

—7—

The objections to the Probate of the Will of Birdine Fletcher, were prepared and filed in the County Court of Oklahoma County by defendant and counterclaimant in Case No. 31726 contesting the beneficiary Sisters of St. Francis, a corporation, who were to receive all of the Estate of Birdine Fletcher except a few thousand dollars bequests.

[fol. 39] —8—

Thereafter on October 14, 1952, after much preparation and research the Federal Court Litigation was authorized and directed by plaintiff and the defendant and counterclaimant as his attorney to file suit in the United States District Court for the Western District of Oklahoma in Case No. 5619 in order to attempt to obtain the real estate in Caddo County, Oklahoma, for plaintiff and for such other matters as the Court may determine, copy of plaintiffs written direction is attached as Exhibit 7. It was filed as Cause No. 5619: and styled A. J. Simler, plaintiff, vs. Sisters of St. Francis, a corporation, and W. H. Wilson, Executor of the Estate of Birdine Fletcher, deceased. The case was contested by those defendant and dismissed by the District Court. A copy of the Appearance Docket in case No. 5619 is attached hereto as Exhibit 8 and made a part hereof and a copy of the opinion of the Court dismissing the cause (110F (s) 761) is attached as Exhibit 9 and made a part hereof. Hereafter said matter was appealed as case No. 4656 to the Court of Appeals Tenth Circuit at Denver,

Colorado, briefed and orally argued and that Court entered a judgment reversing the trial court, a copy of that Opinion is attached as Exhibit 10 and made a part hereof and is recorded in 210 Federal (2) page 99. Appearance Docket in 4656 Court of Appeals is Exhibit No. 10A.

While this litigation was in process the County Court of Oklahoma County had entered an order in case No. 31726 admitting the will of Birdine Fletcher, deceased, to Probate and held the will valid and appointed W. H. Wilson [fol. 40] the person she named in her will as Executor thereof, and a copy of that order dated October 2, 1952, is attached hereto as Exhibit 11, and made a part hereof.

—9—

Thereafter Appeal was had in the will Case No. 31726 from the County Court to the District Court of Oklahoma County and the cause became No. 129158 and after much preparation and the testimony of over 50 witnesses used, taking many days trial, Judge Clarence Mills of the District Court, affirmed the County Court order admitting the Will to Probate copy of the Appearance Docket in that District Court appeal case is attached as Exhibit 12, and made a part hereof.

—10—

That after the appeal of Mr. A. J. Simler, to the District Court in the will litigation and after the filing of Case 5619 in the Federal Court the Executor, W. H. Wilson, and the Sisters and several of their lawyers filed an original action in the Supreme Court of Oklahoma against A. J. Simler as Case No. 36341 wherein they petitioned the Supreme Court to assume original jurisdiction of such a great and new question and to construe the statutes of the State of Oklahoma to assure them that the residuary beneficiary of the Fletcher will could take the real estate. This proceeding was vigorously contested briefed and orally argued and won, and the Court denied the Executor and the Sister's Petition and refused to take jurisdiction on February 2, 1954, copy of that Appearance Docket of the Supreme Court of Oklahoma is attached as Exhibit 13, and made a part hereof.

[fol. 41] —11—

Thereafter Case No. 129158 in the District Court which was 31726 in the County Court on the Will Contest was appealed for A. J. Simler, plaintiff herein by his attorney, counterclaimant, Leslie L. Conner, to the Supreme Court of the State of Oklahoma, and became cause No. 36075 in the Supreme Court. After diligent research and briefing and vigorous oral argument made therein the case was affirmed by the Supreme Court of Oklahoma which held the Will of Birdine Fletcher, sister of Mr. A. J. Simler, to be valid to pass title to all her property and denied the theories of the plaintiff that his sister Birdine Fletcher did not have testamentary capacity to make her will or and that she was under undue influence of the Sisters of St. Francis, a foreign corporation the principal beneficiaries under her will who had been operating St. Anthony's Hospital in Oklahoma City.

Copy of that opinion in No. 36075 in the Supreme Court of Oklahoma is attached as Exhibit 14 and made a part hereof. Copy of the Appearance Docket in the Supreme Court is attached as 14A.

—12—

That while the litigation and contest were proceeding both in the State and Federal Courts W. H. Wilson, the Executor of the estate of Birdine Fletcher, deceased, and the Sisters of St. Francis, a foreign corporation filed a petition for Certiorari ("Appeal") to the Supreme Court of the United States in Washington, D.C., from the [fol. 42] judgment of the Court of Appeals, Tenth Circuit from 210 F (2) 99 and it was necessary for defendant and counterclaimant, Leslie L. Conner, to resist the Petition which was successfully done and the Supreme Court of the United States denied Certiorari (the appeal) in Case No. 677 October 1953, term on (April 25, 1954) as shown by Exhibit 15 attached hereto and made a part hereof being reported in 347 U.S. 954 and 98 L. Ed. in 1099 and thereafter the Executor and the Sisters of St. Francis, filed a petition for Rehearing and Motion to Stay of Proceedings in the Supreme Court of the United States in the same case

which was also denied by the Supreme Court on May 24, 1954, 98 L. Ed. 113 copy of which is attached at Exhibit 16 and made a part hereof.

—13—

Thereafter that appeal case was returned from the Supreme Court to the Court of Appeals, Tenth Circuit and then to the Western District of Oklahoma, in Oklahoma City, and it was necessary to make application and obtain from the Federal District Court certain injunctions against W. H. Wilson the Executor and the Sisters and have judgment entered in Case 5619 which was done on June 14, 1954, copy of the judgment is attached as Exhibit 17, which was again appealed by Wilson and the Sisters to the Court of Appeals, Tenth Circuit, as Case No. 4961 and on Motion of Counterclaimant and for legal reasons the Court of Appeals dismissed their appeal.

[fol. 43] —14—

Thereafter in Case No. 5619 and on March 17, 1955, Injunctions was issued against Wilson and Sisters, copy attached as Exhibit 18.

—15—

Thereafter the said W. H. Wilson, Executor, of the estate of Birdine Fletcher, deceased, and the Sisters of St. Francis, a corporation, and their attorneys continued to claim the farm and right to possession and the oil runs and because of their claims and acts it was necessary to file Case No. 6352 in the Federal Court styled by Mr. A. J. Simler, plaintiff, against the Sisters of St. Francis, a corporation, seeking to quiet title in Mr. A. J. Simler to the 160 acre oil farm all as shown by the Appearance Docket being Exhibit 19 in the United States District Court for the Western District of Oklahoma.

—16—

Thereafter Mr. A. J. Simler, filed a complaint in the United States District Court, against Phillips Petroleum, a

corporation, for an accounting of the oil from the farm and to obtain the oil runs copy of the Appearance Docket in Case No. 6363 in that Court is attached as Exhibit 20.

—17—

Thereafter Mr. A. J. Simler, as plaintiff sued Phillips Petroleum Company to obtain later oil runs which they [fol. 44] refused to pay him, as shown by Appearance Docket in Case No. 6793 being Exhibit 21.

—18—

Appeals were had on case 6452 and 6363 and from other orders in 5619 to the Court of Appeals, Tenth Circuit and attached hereto are the copies of the Appearance Dockets of the Court of Appeals, Tenth Circuit the cases No. 5129 as Exhibit 22 Case No. 5130 as Exhibit 23 Case No. 5131 as Exhibit 24 attached as Exhibit 25 is the Injunction issued by the Court of Appeals, Tenth Circuit March 15, 1955 on Application of A. J. Simler, in Case No. 5102 in that Court against the Executor and Sisters.

—19—

After the entry of the additional judgments of the Circuit Court of Appeals W. H. Wilson, Executor of the estate of Mrs. Birdine Fletcher, and the Sisters of St. Francis, a corporation, who were defendant in these cases filed another Appeal to the Court of Appeals, Tenth Circuit and then to the Supreme Court of the United States asking Certiorari on a second Appeal from a judgment entered in 5619 which was denied on January 31, 1955, in Case 510 October Term 1954 Court as shown in 99 L. Ed. 728 copy of which is hereto attached Exhibit 26.

—20—

After the Court of Appeals, Tenth Circuit had entered judgments in the cases 5129, 5130, and 5131 without opinions directing the Executor and the Sisters of St. Francis, a corporation, among other things to divide the accumulated money and runs W. H. Wilson, Executor and

the Sisters of St. Francis, a corporation, again for the third time sought Certiorari on appeal to the Supreme Court [fol. 45] of the United States and the Executor and Sisters employed the John W. Davis law firm being Davis, Polk, Wardwell, Sunderland, and Kiendl, of New York City, a famous and outstanding New York law firm to represent them. This action was resisted by defendant and Counterclaimant, Leslie L. Conner but Certiorari was granted in Case 409 on November 14, 1955, and the judgments entered by the Court of Appeals, Tenth Circuit in Cases 5129, 5130 and 5131 were vacated and the matter returned to the Court of Appeals, Tenth Circuit, as shown by the opinion in 100 L. Ed. 785 also —— US —— copy of which is attached hereto as Exhibit 27 Petition for rehearing was filed by defendant and counterclaimant, Leslie L. Conner, but was denied in January, 1956. See Exhibit 28.

—21—

Thereafter the County Court of Oklahoma County entered its Final Order in Case 31726 allowing the Final Account of the Executor on December 9, 1954, and distributing to A. J. Simler the 160 acre oil farm but charging him with payment of all legacies, interest, taxes costs and the expenses (which in effect vacated the order) a copy of which is attached as Exhibit 29, which order was appealed for Mr. A. J. Simler by his attorney, Leslie L. Conner, the defendant and counterclaimant, to the District Court of Oklahoma County on December 15, 1954, and who presented to and heard by District Judge A. P. Van Meter who affirmed the order of the County Court copy of the Appearance Docket in Case No. 134859 District Court of Oklahoma attached as Exhibit 30.

[fol. 46] —22—

On Appeal to the Supreme Court of Oklahoma by defendant and counterclaimant, Leslie L. Conner, as Attorney for A. J. Simler these causes became No. 37365 in the Supreme Court and after diligent work planning, briefing, research and oral argument, the Supreme Court reversed that judgment in part, all as shown by a copy of the Ap-

pearance Docket in that case attached as Exhibit 31 which saved plaintiff, Mr. A. J. Simler, thousands of dollars all being reported 308 P (2) 304. Copy attached as Exhibit 32.

—23—

Thereafter Phillips Petroleum Company sued A. J. Simler and Wilson and Sisters for Interpleader on the oil runs it was holding as shown in copy of the Appearance Docket attached as Exhibit 33 being Federal District Court Case No. 7107.

—24—

Thereafter the estate of Birdine Fletcher was closed and W. H. Wilson, Executor of the Will and Estate of Birdine Fletcher was discharged all as shown by the Appearance Docket in Case No. 31726 attached here as Exhibit 34, and the property distributed and the plaintiff A. J. Simler obtained the farm and returns and the balance of the cash.

—25—

Thereafter the plaintiff and Counterclaimant this defendant entered into written agreements dated May 22, 1957, which are self explanatory and copies are attached as Exhibit 35 on Division of money and Exhibit 36 being [fol. 47] agreement that plaintiff would not sell, dispose of, transfer or encumber the farm described as:

> NW ¼ of Section 34, Township 6 North, Range 10 West in Caddo County, Oklahoma.

before settling with defendant for his services:

That all 36 Exhibits attached hereto are made a part of the Answer and Counterclaim as though herein repeated and set forth in full.

—26—

The agreements for division of recovered property between plaintiff, Mr. A. J. Simler, and defendant and counterclaimant, Leslie L. Conner, was on a 50% basis became of the extensive litigation and Appeals and has not been performed by plaintiff, Mr. A. J. Simler, although defen-

dant has worked as attorney for plaintiff for over 5 years and has performed his contract, obtained the farm and balance of the funds and plaintiff, Mr. A. J. Simler has refused to perform his agreement, now that recovery has been made and refuses to deliver to defendant, Leslie L. Conner, his attorney his one-half of the recovery.

—27—

Plaintiff, Mr. A. J. Simler, did not own or have any right, title or interest in and to the 160 acre farm heretofore described and his only hope of securing any interest therein was by the diligent, constant and effective efforts of an [fol. 48] attorney able and willing to prosecute his claim to a successful conclusion. The entire litigation involved in the contest of the will of Birdine Fletcher and the Federal Court Litigation to prevent the beneficiary from taking the property was both novel and extremely difficult. The plaintiff and contestant, Mr. A. J. Simler, was not a local citizen of this community (nor an established company) nor a regular client but was a resident of North Little Rock, Arkansas.

—28—

Employment and attempt to recover more than the "$1.00 and no more" which his sister willed him, in such case, was beset with legal disadvantages considering the fact that the principal defendant and the beneficiary, the Sisters of St. Francis, in his sisters will was a Catholic Religious Society and Sisters operating the largest hospital and other charities in Oklahoma and who had befriended and taken care of Birdine Fletcher, his sister, in her old age and sickness. The fact that his sister Birdine Fletcher preferred and willed all her property to Charity rather than give it to her brother this plaintiff, A. J. Simler. He had filed a Guardianship case against her in 1950 in an attempt during her lifetime to obtain possession of her property; in this action he failed.

—29—

Acceptance of employment in such a case involved many considerations. The employment was on a contingent fee

[fol. 49] contract, uncertain of compensation or return of expenses advanced or rent and salaries paid to employees and others and the investigation required and the amount of work involved and the daily cost of operating a law firm and office.

—30—

The litigation took an excessive amount of lawyers time, stenographers, briefs, conferences, letter writing, travel, research, arguments, telephone calls, and expense involved a great amount of thinking, planning investigation and constant work and effort all the time, on the part of the defendant and counterclaimant, Leslie L. Conner. It involved research writing and preparation of briefs and making of many legal arguments in the County Court, District Courts, and the Supreme Court and the Court of Appeals, Tenth Circuit; and the Supreme Court of the United States.

—31—

It also involved hours, days, weeks, and months and more than five years of work and labor. It took faith and perseverance in order to win the case and obtain for A. J. Simler, this plaintiff, more than the *"$1.00 and no more"* which his own sister, Birdine Fletcher, had left him in her will.

—32—

Defendant and counterclaimant alleges he has fully [fol. 50] performed his legal services and is entitled to his part of the recovery.

—33—

It was a contingent fee on a graduated scale made in 1952, when plaintiff had *"one dollar and no more"* which fifty percent or one-half contingent fee of whatever is recovered, after payment of expenses considering the amount involved, the number of cases and courts involved is the customary charge made by members of the Bar in this locality who practice law and try law suits and appeal cases in the State and Federal Courts and is the amount of

contingent attorneys fees allowed by the laws of the State of Oklahoma. It took skill and faith to conduct the litigation. The amount involved in this case was great. As a result of the skill, labor and legal services and the constant effort of this defendant and counterclaimant as the lawyer for the plaintiff, Mr. A. J. Simler, there was recovered the 160 acre oil producing farm with many oil wells and a share of the oil produced therefrom each month. Other wells are being drilled thereon and only the top oil sands have been produced and many feet of productive sands remain. It is very valuable and defendant and counterclaimant is entitled to be adjudged to be over one-half thereof.

Wherefore Leslie L. Conner, Defendant and counterclaimant prays this Court to enter judgment for him and against plaintiff as follows:

[fol. 51] 1. That this Court render a judgment in favor of Leslie L. Conner, defendant and counterclaimant herein and against the plaintiff, A. J. Simler, adjudging that defendant and counterclaimant, Leslie L. Conner having performed all these legal services on a contingent fee contract and agreement as attorney for A. J. Simler is entitled to, and adjudged to be, the owner of a one-half (½) undivided interest in all oil produced from the

> The Northwest Quarter (NW¼) of Section Thirty Four (34) in Township Six (6) North, Range Ten (10) West in Caddo County, Oklahoma.

since April 1, 1957, and that after deducting of all sums paid to Mr. James E. Grigsby and Mr. John B. Ogden to May 1957 and all courts costs and expenses spent by defendant and counterclaimant, Leslie L. Conner, and all expenses spent by plaintiff A. J. Simler, that the defendant and counterclaimant be adjudged to be owner of one-half of the net remainder of the sum of over $90,000.00 paid to plaintiff, A. J. Simler by the Executor in and since May 1957, less the amount paid at that time to defendant and counterclaimant by the plaintiff and,

2. That the Court enter judgment in favor of Leslie L. Conner, defendant and counterclaimant, and against A. J.

Simler, the plaintiff, adjudging that Leslie L. Conner, defendant, and counterclaimant has an attorneys lien on and entitled to judgment for and the owner of an undivided one-half (1/2) iterest in:

[fol. 52] The Northwest Quarter (NW1/4) of Section Thirty Four (34), Township Six (6) North, Range Ten (10) West in Caddo County, Oklahoma.

and said lien be foreclosed all as provided by law and plaintiff be directed to execute the proper and legal covevance of said one-half undivided interest in said land, and,

3. For such other further and different relief, legal or equitable, general or special, to which he may show himself entitled, including interest and costs.

Leslie L. Conner.

Certificate of Service (omitted in printing).

[fol. 66]

EXHIBIT 4 TO ANSWER AND COUNTERCLAIM

July 18, 1952.

Mr. Leslie L. Conner, Atty.,
410-414 Hightower bldg.,
Oklahoma City, Oklahoma.

Dear Sir:—

Re: BIRDINE FLETCHER ESTATE
COUNTY COURT OKLAHOMA COUNTY, OKLAHOMA.

This confirms our employment of your self and law firm to represent us in the matter of the Estate of Birdine Fletcher, deceased, now pending in the County Court of Oklahoma County, Oklahoma, wherein certain people have filed petition to probate an alleged will supposed to be signed by her.

We agree to pay all the witness fees, court costs, furnish all bonds, purchase copy of all records from court reporters, prepare the evidence and pay all necessary bills to contest the admission of this will to probate because

we do not believe it is a valid will. We understand that this will run in the approximate neighborhood of $1,000.00

We also agree to pay you and your firm a reasonable attorneys fee for the services rendered and to be rendered in this case in the County Court, and if necessary in the District Court and if necessary in the Supreme Court of the State of Oklahoma, which fee may be set by the County Court or any other court; if the matter is successful either by trial or judgment or compromise.

If the matter is not, won, compromised or settled you are not to charge us a fee.

Yours truly,

/s/ A. J. SIMLER
A. J. Simler, for himself
and his children.

[fol. 68]

EXHIBIT 6 TO ANSWER AND COUNTERCLAIM

September 25, 1952

Mr. Leslie L. Conner
Conner, Hilpirt & Britton
Attorneys and Counselors at Law
410-414 Hightower Building
Oklahoma City, Oklahoma

Dear Sir:—

With reference to my letter of July 18, 1952, employing your firm in the Fletcher Will and Estate Contest, I agree that the reasonable fee is:

25% of the amount recovered if settled without trial.

33% of the amount recovered if case is tried in County and District Court.

50% of the amount recovered if the case is appealed to the Supreme Court.

taxes

I understand that all expenses and costs are to be deducted first.

This is a contingent fee and if nothing is recovered, no fee is to be paid.

If anything is recovered or settled, I agree to pay you the above fees.

Yours truly,

/s/ A. J. Simler
A. J. Simler

[fol. 69]

EXHIBIT 7 TO ANSWER AND COUNTERCLAIM

Oklahoma City, Oklahoma
October 14, 1952

Conner, Hilpirt and Britton
Attorneys and Counselors at Law
Hightower Building
Oklahoma City, Oklahoma

Gentlemen:—

This is your authority and direction to file an action in the United States District Court for the Western District of Oklahoma, brought by me as the Plaintiff against W. H. Wilson as Executor of the Estate of Birdine Fletcher, and Sisters of St. Francis, a foreign Corporation, in which action we are to sue to void the Will insofar as the Real Estate in Caddo County, Oklahoma, is concerned, and for such other matters as the Court may determine in Declaratory judgment.

Yours very truly,

/s/ A. J. Simler
A. J. Simler

[fol. 166]

EXHIBIT 29 TO ANSWER AND COUNTERCLAIM

[Stamp—FILED IN COUNTY COURT, OKLAHOMA COUNTY, OKLA., DEC 9 1954, CLIFF MYERS, Court Clerk, By /s/ E. McKINNOR, *Deputy.*]

IN THE COUNTY COURT IN AND FOR OKLAHOMA COUNTY

STATE OF OKLAHOMA

No. 31,726

In the Matter of the Estate of

BIRDINE FLETCHER, Deceased.

ORDER ALLOWING FINAL ACCOUNT, DETERMINING HEIRS, AND FINAL DECREE OF DISTRIBUTION

. . . . . .

[fol. 169] IT IS FURTHER ORDERED That the total debts and expenses of administration, as allowed herein, except the balance of estate and income taxes, which cannot now be definitely determined, are $58,700.92; that the specific legacies provided in the will as hereinabove shown total $69,009.00, with interest on said legacies from July 13, 1953, to March 30, 1954.

IT IS FURTHER ORDERED That the farm in Caddo County herein described and the rents and royalties therefrom which have accrued since July 13, 1952, are subject to the payment of all debts, expenses of administration, including estate and income taxes, and all specific legacies, with interest to March 30, 1954. *It is the intention to distribute title to said farm in A. J. Simley, free and clear of all obligations of any nature whatsoever except as herein set out.*

IT IS FURTHER ORDERED That unless a final determination of the estate and income taxes due the state and

federal government can be made and all such amounts, with interest, paid prior to final distribution, the executor is authorized to reserve from the intestate property the sum of $25,000.00 from which to pay all such additional assessments. And upon the final payment of such taxes and interest, any amount of said sum remaining shall be paid to A. J. Simler, as the sole heir at law of decedent.

IT IS FURTHER ~~ORDERED, ADJUDGED AND DE~~CREED That said estate remaining on hand for distribution should be and is hereby distributed as follows:

To A. J. Simler, the following described real property:

Northwest Quarter of Section 34, Township 6 North, Range 10 West, in Caddo County, Oklahoma,

and all income therefrom from and after July 13, 1952, after payment of all debts, expenses of administration, including taxes, and all legacies with accrued interest.

Italicized material handwritten.

[fol. 202] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF THE STATE OF OKLAHOMA

No. 8008—Civil

[Title omitted]

MOTION TO STRIKE AND MOTION FOR A MORE DEFINITE STATEMENT—Filed October 15, 1958

Comes now the above named plaintiff and moves the Court to strike from the answer of the defendant all of the first paragraph of paragraph 4 with the exception of the following words:

"As to paragraph three defendant admits that he is a lawyer,"

the remaining portion of said paragraph being redundant, immaterial and prejudicial.

The plaintiff moves the Court to require the defendant to set out in the second paragraph of paragraph 4 of the answer what contract he relies upon and to elect and state what contract he relies on, and when he was employed, and to state the consideration, if any, for the alleged second contract mentioned or alleged therein.

The plaintiff moves the Court to strike from the third paragraph of paragraph 4 the following:

> "That Plaintiff and Defendant on September 25, 1952 because of other proposed litigation agreed on clarification of the word "reasonable fee" in said contingent fee contract of July 15, 1952."

And in case the Court shall decline to strike therefrom the above allegation, then this plaintiff moves the Court to require the defendant to set out the consideration for said letter or agreement and who ad sed, if anyone, the said plaintiff to sign said letter.

[fol. 203] The plaintiff moves the Court to strike from paragraph 6 the following:

> "payable out of the Fifty percent contingent fee contract signed by Mr. A. J. Simler,"

and to strike from said paragraph the following:

> "out of defendant's, Leslie L. Conner, fifty percent contract"

The plaintiff further moves the Court to require defendant to state who reimbursed the said A. J. Simler for the payment to James E. Grigsby.

The plaintiff further moves the Court to strike from paragraph 6 the following:

> "Defendant employed Phil E. Daugherty to assist him in the case on a contingent fee agreement payable out of defendant's, Leslie L. Conner, fifty percent contract and he was worked continuously in the case with this defendant."

This plaintiff shows that all of said matters are incompetent, irrelevant, redundant, prejudicial and immaterial, and said matters above pled are pled for the sole purpose of creating prejudice against this plaintiff and attempting to take advantage of this plaintiff, and that the so-called letter dated the 25th day of September, 1952 was and is under the allegations of the pleadings herein null and void and of no force and effect, and that the relationship, according to the pleadings herein, had been the relationship of attorney and client and had been established prior thereto and on or about July 15, 1952, and that the said Leslie L. Conner was then and there and thereafter the attorney for the plaintiff herein, and he could not make any contract which would inure to the benefit of the defendant and against the plaintiff after said time, and that any attempt to so do is void and of no force and effect, and this plaintiff therefore moves the Court to strike from said answer and the cross-complaint herein all reference of any kind, character or nature to said purported letter of September 25, 1952 referred to in the defendant's answer and cross-complaint for said reasons.

[fol. 204] This plaintiff moves the Court to require the defendant to allege what sum, if any, the said James E. Grigsby was entitled to as attorney in said cause and when the said Grigsby quit, referred to and mentioned by the defendant in paragraph 6.

This plaintiff moves the Court to require the defendant to state in connection with paragraph 8 of his answer whether or not the $12,800.00 paid by this plaintiff to James E. Grigsby was a reasonable sum for the services rendered by the said James E. Grigsby, and if not, what amount the said defendant contends was a reasonable sum, in order that this plaintiff may know whether or not there is any contest or controversy between plaintiff and defendant with reference to the payment to the said James E. Grigsby of $12,800.00 as plead in the complaint herein.

This plaintiff moves the Court to require the defendant to make paragraph 9 more definite and certain by setting out what amount the defendant paid to other attorneys and to what other attorneys he refers, and to set out additional cost that he had paid, and to set out the amount left

to the defendant for his services. This plaintiff specifically moves the Court to strike from paragraph 9 all reference to the following:

"all as per written agreements made between the parties copies of which are attached hereto,"

and in connection therewith, shows to this Honorable Court that the agreement was solely for the purpose of disbursing money without prejudice to the rights of either of the parties, and that said agreement specifically uses the following language:

"Whereas A. J. Simler and Leslie L. Conner have been unable to arrive at a settlement pertaining to Leslie L. Conner's attorney's fees for his legal services rendered as attorney for the said A. J. Simler.

"Now, Therefore, without prejudice to the claims, contentions or agreement of either Leslie L. Conner or A. J. Simler with reference to said attorney's fees, it is agreed as follows:

[fol. 205] "First. That this instrument and agreement shall in nowise be considered by any of the parties hereto as a construction of the agreement with reference to attorney's fees between Leslie L. Conner and A. J. Simler, And This Agreement Shall Not Be Offered As Evidence In Any Court By Either Of The Parties Hereto Or Any Other Person Or The Heirs, Executors, Assigns Or Administrators Of Any Of The Parties Hereto. It Is Understood Between The Parties That This Agreement Simply Is Made So That The Money Now On Hand And To Be Distributed Can Be Used In Part And As Hereinafter Set Out By The Parties Hereto."

This plaintiff shows to this Honorable Court in connection therewith, that the said defendant well knew that said agreement was incompetent, but that he is pleading the same for the purpose of prejudicing the rights of this plaintiff herein and in violation of his written agreement, and that the same should be stricken from the answer and cross-complaint filed herein by the defendant, and for the

further reason that the same does not in anywise tend to prove or disprove any of the issues in this cause.

Motion and Pleading With Reference to Answer to Amendment to Complaint

This plaintiff moves the Court to strike paragraph 1 of answer to amendment to complaint for the reason the same does not state any facts which are pertinent, material or relevant herein.

This plaintiff moves the Court to strike from said answer to amendment to complaint the following appearing in paragraph 3 thereof:

> "and he is demanding that Mr. A. J. Simler, the plaintiff perform his agreement and transfer to this defendant one-half of all sums and things of value recovered for him in this five year litigation all as agreed in writing between plaintiff and defendant in 1952 when plaintiff had been given '*$1.00, and no more*' in the Will of Birdine Fletcher and he employed plaintiff to try to obtain back from the 'legatees named therein' the amounts his sister had given them in her will."

In connection therewith, this plaintiff shows to this Honorable Court that the basis of the defendant's allegation is contained in said paragraph in the letter of September 25, [fol. 206] 1952, and that the same is void, and that said pleading in said paragraph is prejudicial, redundant and immaterial and should be stricken from said paragraph, and in case the Court shall decline to so strike, then and in that event, the Court is requested to require the defendant to make said paragraph more definite and certain by stating upon what he bases the allegations therein.

This plaintiff moves the Court to strike the prayer set forth on page 6 of the answer to amendment to complaint, or that the defendant be required to state upon what grounds he asks the Court to dismiss this action and upon what ground or reason he offers for denying the plaintiff anything whatsoever herein.

MOTIONS AND PLEADINGS TO COUNTERCLAIM OF DEFENDANT LESLIE L. CONNER

This plaintiff moves the Court to strike from paragraph 2 of said counterclaim the following:

> "and later on September 25, 1952, plaintiff and defendant clarified the terms of that contingent fee contract by an agreement in writing providing for a scale of contingent fees to be paid defendant on the settling of the case, or trials or appeals thereof: that defendant and counterclaimant has performed his contract and plaintiff herein refuses to perform his agreement for division of the property recovered for him by this defendant and counterclaimant growing out of the litigation involving the following facts in the following cases and appeals, as shown by the allegation and the attached exhibits."

In connection with the above, this plaintiff shows to this Honorable Court that said purported letter of September 25, 1952 is not a contract, was never signed by Leslie L. Conner, Leslie L. Conner did not agree to do anything in connection with said litigation, but that the said Leslie L. Conner prepared said so-called letter on September 25, 1952 and requested the said plaintiff to sign the same and the plaintiff refused, and thereafter the said defendant, Leslie L. Conner persuaded and coerced the said plaintiff to sign said letter, and that at that time the relationship [fol. 207] of attorney and client existed between the said Leslie L. Conner and the plaintiff herein by virtue of the employment as evidenced by letter of July 18, 1952 wherein the said Leslie L. Conner accepted said employment on the basis and solely upon the basis of a reasonable fee to be fixed by the Court, all as shown in the letter of July 18, 1952, and therefore, said letter of September 25, 1952 is null, void and of no force and effect whatsoever, and the same is prejudicial and does not prove or tend to prove any of the issues in this cause.

This plaintiff moves to strike all of paragraph 3 from said counterclaim of the defendant for the reason the same is wholly incompetent, irrelevant and immaterial and does not constitute a cause of action or a defense to a cause

of action and is prejudicial and does not prove or tend to prove any of the facts pertinent to a disposition or trial of this cause, and is only pled for the purpose of prejudicing the rights of this plaintiff.

This plaintiff also moves the Court to strike the attached exhibits 1 and 2 referring to the allegations of paragraph 3 above mentioned for the same reasons, namely that the same are incompetent, irrelevant, immaterial, redundant, prejudicial and do not tend to establish or prove any of the issues in this cause.

This plaintiff moves the Court to strike all of paragraph 6 from the counterclaim of the defendant for the reason that the same is prejudicial, incompetent, redundant and does not plead plead allegations sufficient to constitute a cause of action or a defense to the plaintiff's complaint, and for the further reason that the alleged agreement or letter of September 25, 1952 is null and void, and that at that time the relationship of attorney and client existed and had existed since the 18th day of July, 1952, and therefore, said purported letter is in all things void and of no force and effect.

The plaintiff moves the Court to require the defendant to set out as pled in paragraph 8 of his counterclaim, who prepared exhibit No. 7 and where the same was executed, and upon whose advice if any, it was executed.

[fol. 208] The plaintiff moves the Court to strike exhibit No. 8 referred to in paragraph 8, and exhibit No. 10 referred to therein, and exhibit No. 10A and exhibit No. 11, all referred to in paragraph 8, for the reason that the exhibits mentioned above are immaterial, and that it is an attempt upon the part of the defendant to plead cumbersome exhibits which constitute no part of the counterclaim, and which tend to be confusing and is an attempt to plead evidence and also an attempt to plead matters over which there is no controversy and is in violation of the Rules of Civil Procedure in that it does not state a short, brief and concise statement of the facts relied upon. In connection therewith, this plaintiff shows to this Honorable Court that the opinions and dockets of the courts are not competent, especially in view of the fact that there is no controversy as to the proceedings being had.

Plaintiff moves the Court to strike paragraph 9 of said counterclaim for the same reason, in that the dockets or appearance dockets are not competent evidence herein and do not constitute a cause of action or a defense to plaintiff's complaint and are wholly incompetent, irrelevant and immaterial.

The plaintiff moves the Court to strike exhibit 12, the same being a copy of the appearance docket of the District Court of Oklahoma County, Oklahoma.

The plaintiff moves the Court to strike exhibit 13 mentioned in paragraph 10, it being a copy of the appearance docket of the Supreme Court of the State of Oklahoma and a certain application filed in said Supreme Court asking the Court to take original jurisdiction.

The plaintiff moves the Court to strike exhibit 14 mentioned in paragraph 11 of the cross-complaint, same being the opinion of the Supreme Court in the case of A. J. Simler, plaintiff in error, wherein the Supreme Court affirmed the District Court, and also to strike exhibit 14A, same being a copy of the appearance docket in the Supreme Court in the last mentioned cause.

[fol. 209] The plaintiff moves the Court to strike from paragraph 12 the word, "Appeal", for the reason there was no appeal and merely a petition filed for certiorari in the Supreme Court of the United States as mentioned in said paragraph, and to strike exhibit 15 mentioned therein, which is purportedly the order of the Supreme Court denying said petition, and the words used are simply "Denied", and the same does not prove or disprove any of the controverted allegations herein.

The plaintiff moves to strike exhibit 16 for the same reason.

The plaintiff moves the Court to strike exhibit 17 mentioned in paragraph 13 of the cross-complaint for the same reason, the same purporting to be an order of the Court of Appeals, Tenth Circuit.

The plaintiff moves the Court to strike exhibit 18 mentioned in paragraph 14, to strike exhibit 19 mentioned in paragraph 15, to strike exhibit 20 mentioned in paragraph 16, exhibit 21 mentioned in paragraph 17, exhibit 22, 23 and 24 and 25 mentioned in paragraph 18, exhibit 26 men-

tioned in paragraph 19, exhibit 27 and 28 mentioned in paragraph 20, and to strike the following from paragraph 20:

> "Executor and Sisters employed the John W. Davis, law-firm being Davis, Polk, Wardwell, Sunderland, and Kiendl, of New York City, a famous and outstanding New York law firm to represent them."

for the reason the same is wholly incompetent, irrelevant, redundant, immaterial, prejudicial, and does not state a defense in this cause or a cause of action in favor of the defendant.

This plaintiff shows that all exhibits mentioned hereinabove showing or tending to show appearance dockets in various courts copy of opinions in various courts, are wholly immaterial for the reason there is no controversy, and for the further reason it is an attempt to plead evidence herein and is in direct violation of the Rules of Civil [fol. 210] Procedure and makes the pleading unnecessarily voluminous without serving any useful purpose, and the same would be confusing to the jury and is wholly incompetent and prejudicial to the rights of this plaintiff. This plaintiff in connection therewith, shows to this Honorable Court that the only question actually involved herein is: What is a reasonable fee for the services performed? That the defendant is entitled to show what services he performed, but it is wholly unnecessary to plead herein the opinions, appearance dockets and exhibits heretofore mentioned in his cross-complaint herein.

This plaintiff moves to strike Exhibit 29 and 30 mentioned in paragraph 21 for the same reasons as mentioned above, exhibit 31 mentioned in paragraph 22, exhibit 33 mentioned in paragraph 23, exhibit 34 mentioned in paragraph 24, for the reasons herein mentioned above.

The plaintiff most respectfully moves the Court to strike exhibit 36 for the reason that the same was executed in connection with an attempt to compromise the matter before the Court, and for the further reason the same does not prove or disprove or tend to prove or disprove any of the issues in this cause.

This plaintiff further specifically moves the Court to strike exhibit 35 for the reason that the same was entered into between the parties solely for the purpose of attempting to compromise and that said agreement so states that the same was entered into without prejudice to the claims, contentions or agreement of either Leslie L. Conner or A. J. Simler with reference to said attorney's fees; and that said exhibit 35 further uses the following language:

> "That this instrument and agreement shall in nowise be considered by any of the parties hereto as a construction of the agreement with reference to attorney's fees between Leslie L. Conner and A. J. Simler, and this agreement shall not be offered as evidence in any [fol. 211] court by either of the parties hereto or any other person or the heirs, executors, assigns or administrators of any of the parties hereto. It is understood between the parties that this agreement simply is made so that the money now on hand and to be distributed can be used in part and as hereinafter set out by the parties hereto."

This plaintiff moves the Court to strike paragraph 26 of the cross-complaint for the reason that under the pleadings herein the defendant was only entitled to a reasonable fee, and there is no legal basis pled by the defendant to support the conclusions and allegations set forth in paragraph 26.

This plaintiff moves the Court to strike the following from paragraph 27:

> "and the Federal Court Litigation to prevent the beneficiary from taking the property was both novel and extremely difficult. The plaintiff and contestant, Mr. A. J. Simler, was not a local citizen of this community (nor an established company) nor a regular client but was a resident of North Little Rock, Arkansas."

This plaintiff shows that the residence of the plaintiff should not, did not and could not have any effect upon the proceedings, and that this plaintiff was proceeding upon the law and not upon persuasion or local preferment, and therefore, said allegations are wholly immaterial.

This plaintiff moves the Court to strike from paragraph 28 the following:

> "considering the fact that the principal defendant and the beneficiary, the Sisters of St. Francis, in his sisters will was a Catholic Religious Society and Sisters operating the largest hospital and other charaties in Oklahoma and who had befriended and taken care of Birdine Fletcher, his sister, in her old age and sickness. The fact that his sister Birdine Fletcher preferred, and willed all her property to Charity rather than give it to her borther this plaintiff, A. J. Simler. Hehad filed a Guardianship case against her in 1950 in an attempt during her lifetime to obtain possession of her property, in this action he failed."

for the reason that the same is incompetent, irrelevant, immaterial, prejudicial and does not prove or tend to prove any of the issues in this case, and therefore should be stricken from the cross-complaint.

[fol. 212] This plaintiff moves the Court to strike paragraph 29 for the reason the same is wholly incompetent, redundant, prejudicial and does not plead or tend to plead a cause of action or a defense as to the issues involved herein, and in case the Court shall decline to strike the same, then this plaintiff moves the Court to require the defendant to detail and attach an itemized statement or statements showing the expenses advanced or rent or salaries paid to employees and others and the investigation required and the amount of work involved and the daily cost of operating a law firm and office, and what other income he had and what other cases he had other than the one involved or the litigation mentioned in the pleadings in this cause, and as a reason for making such last mentioned motion, this plaintiff shows that in said paragraph the defendant uses the following:

> "Acceptance of employment in such a case involved many consideration. The employment was on a contingent fee contract, uncertain of compensation or return of expenses advanced or rent and salaries paid to employees and others and the investigation required

and the amount of work involved and the daily cost of operating a law firm and office."

This plaintiff moves the Court to require the defendant to state whether there was a law firm employed or only Leslie L. Conner, and if there was a law firm employed to state the members thereof and the contract of the partnership.

The plaintiff moves the Court to strike all of paragraph 30 from the cross-complaint for the reason the same is incompetent, redundant, cumulative, prejudicial, immaterial and does not constitute a cause of action or defense to the cause of action or petition, and in case the Court shall decline to so strike, then to require the defendant to itemize the expenses, amount of thinking, the amount of work in hours, days or weeks, and the time mentioned therein set out in either days, weeks, months or some manner, rather than general conclusions as pled therein.

[fol. 213] The plaintiff moves the Court to strike paragraph 31 for the same reason, and in case the Court shall decline to strike, then to require the defendant to itemize the number of hours, days weeks, and months mentioned therein.

This plaintiff moves the Court to strike all of paragraph 33, and in case the Court shall decline to strike all of paragraph 33, then this plaintiff specifically moves this Court to strike the following from said paragraph:

> "It was a contingent fee on a graduated scale made in 1952, when plaintiff had *'one dollar and no more'* which fifty percent or one-half contingent fee of whatever is recovered, after payment of expenses considering the amount involved, the number of cases and courts involved is the customary charge made by members of the Bar in this locality who practice law and try law suits and appeal cases in the State and Federal Courts and is the amount of contingent attorneys fees allowed by the laws of the State of Oklahoma."

In case the Court shall decline to strike said quotation from paragraph 33 above, then the plaintiff moves the Court to require the defendant to state whether he is relying upon

what is an ordinary reasonable fee, or relying upon any contract between the parties hereto, and in case the defendant states that he is relying upon a contract, being a letter dated September 25, 1952, then to strike the same from the pleadings herein for the reasons hereto set out in this motion. This plaintiff moves the Court to strike the following from said paragraph:

> "It took skill and faith to conduct the litigation. The amount involved in this case was great. As a result of the skill, labor and legal services and the constant effort of this defendants and counterclaimant as the lawyer for the plaintiff, Mr. A. J. Simler, there was recovered the 160 acre oil producing farm with many oil wells and a share of the oil produced therefrom each month. Other wells are being drilled thereon and only the top oil sands have been produced and many feet of productive sands remain. It is very valuable and defendant and counterclaimant is entitled to be adjudged to be over one-half thereof."

In case the Court shall decline to strike from said cross-complaint the above, then and in that event, the plaintiff moves the Court to require the defendant to state what amount was involved, instead of using the term: "The [fol. 214] amount involved in this case was great." The plaintiff also moves the Court to require the defendant to set out what other wells are being drilled thereon, and to state what other sands will be produced and what he means by the term: "only the top oil sands have been produced and many feet of productive sands remain." The plaintiff moves the Court to require the defendant to set out what other sands remain and what sands he refers to as "top sands". This plaintiff moves the Court to require the defendant to set out what he means by the term "it is very valuable", and to set out such term in money. The plaintiff moves the Court specifically to strike the following from said paragraph:

> "defendant and counterclaimant is entitled to be adjudged to be over one-half thereof."

The plaintiff moves the Court to strike the following from the prayer of the counterclaim:

"and adjudged to be, the owner of a one-half ($\frac{1}{2}$) undivided interest in all oil produced from the

The Northwest Quarter (NW$\frac{1}{4}$) of Section Thirty Four (34) in Township Six (6) North, Range Ten (10) West in Caddo County, Oklahoma.

since April 1, 1957, and that after deducing of all sums paid to Mr. James E. Grigsby and Mr. John B. Ogden to May 1957 and all courts costs and expenses spent by defendant and counterclaimant, Leslie L. Conner, and all expenses spent by plaintiff A. J. Simler, that the defendant and counterclaimant be adjudged to be owner of one-half of the net remainder of the sum of over $90,000.00 paid to plaintiff, A. J. Simler by the Executor in and since May, 1957, less the amount paid at that time to defendant and counterclaimant"

for the reason that said allegations in paragraph 1 of the prayer are not supported by any legal or proper allegations or exhibits which would authorize the rendition of such judgment.

This plaintiff moves the Court to strike all of paragraph 2 of the prayer of said cross-complaint appearing on pages 23 and 24 of said cross-complaint for the reason that there is no legal or proper pleading authorizing or warranting the rendition of such judgment prayed for, namely a one-half interest in the property of this plaintiff.

[fol. 215]

Conclusion of Motion

In conclusion of the Motion, this plaintiff shows to this Honorable Court that there is only one issue involved in this lawsuit, and that is: What is a reasonable fee for the services performed, and that this motion should be sustained for the reason that the pleadings show, and this Motion calls to the Court's attention the fact that the defendant has attempted to inject into this cause issues foreign to the actual issues involved.

Wherefore, this plaintiff moves the Court to sustain this motion.

Respectfully submitted,

/s/ John B. Ogden, Attorney for Plaintiff, 1408-9 Liberty Bank Building, Oklahoma City, Oklahoma.

Certificate of service (omitted in printing).

[fol. 243] [File endorsement omitted]

[fol. 244]

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF OKLAHOMA

No. 8008 Civil

[Title omitted]

REPLY TO COUNTERCLAIM OF DEFENDANT

Filed May 14, 1959

Comes now the above named plaintiff and for his reply to the Counterclaim set forth in Paragraphs 1 through 23, inclusive, and 1 to 3 in the prayer of the Counterclaim, and says:

1.

This plaintiff specifically denies that he entered into an agreement on September 25, 1952 for the purpose of clarifying the terms of the contingent fee contract entered into on July 18, 1952 between the plaintiff and the defendant, Leslie L. Conner

2.

This plaintiff shows to this Honorable Court that the true facts with reference to the letter dated September 25, 1952 and referred to in Paragraph 2 of the Counterclaim are as follows.

3.

This plaintiff shows that heretofore and on or about July 18, 1952, he was introduced to the defendant, Leslie L. Conner and the plaintiff had not prior thereto known the said Leslie L. Conner and that on said date the plaintiff and defendant discussed employment by the plaintiff of the said [fol. 245] defendant to represent this plaintiff as his attorney in a certain will contest case then filed and pending or about to be filed in the County Court of Oklahoma County, Oklahoma, involving the will of plaintiff's deceased sister, Birdine Fletcher. That at the time of the death of Birdine Fletcher she owned real property in Oklahoma City, Oklahoma, personal property, bonds, notes and securities and the real estate consisted of a farm located in Caddo County, Oklahoma and described in the Counterclaim of the defendant herein.

4.

This plaintiff now shows that after a conference with the said Leslie L. Conner, he signed a letter of employment prepared by the said defendant and dated July 18, 1952, which letter of employment or copy thereof is pled in the Counterclaim on file herein and in which and by the terms of which the said Leslie L. Conner was to receive for his services a reasonable fee and this plaintiff was to pay the cost of the litigation which might or would thereafter ensue, all as more fully appears from a copy of said letter pled herein, and which said letter of employment is in words and figures as follows, to-wit:

"July 18, 1952.

Mr. Leslie L. Conner, Atty.,
410-414 Hightower Bldg.,
Oklahoma City, Oklahoma.

Dear Sir:—

Re: Birdine Fletcher Estate
County Court
Oklahoma County, Oklahoma

This confirms our employment of yourself and law firm to represent us in the matter of the Estate of Birdine

Fletcher, deceased, now pending in the County Court of Oklahoma County, Oklahoma, wherein certain people have filed petition to probate an alleged will supposed to be signed by her."

[fol. 246] "We agree to pay all the witness fees, court costs, furnish all bonds, purchase copy of all records from court reporters, prepare the evidence and pay all necessary bills to contest the admission of this will to probate because we do not believe it is a valid will. We understand that this will run in the approximate neighborhood of $1,000.00.

"We also agree to pay you and your firm a reasonable attorneys fee for the services rendered and to be rendered in this case in the County Court, and if necessary, in the District Court and if necessary in the Supreme Court of the State of Oklahoma, which fee may be set by the County Court or any other court if the matter is successful either by trial or judgment or compromise.

"If the matter is not won, compromised or settled, you are not to charge us a fee.

Yours truly,

/s/ A. J. SIMLER
A. J. Simler, for himself
and his children"

5.

This plaintiff now shows to this Honorable Court that after the execution of said letter by the plaintiff, the relationship of attorney and client then existed and that the said defendant then became the attorney for the plaintiff and began representing the said plaintiff as his attorney in connection with the said estate or will contest.

6.

This plaintiff shows that thereafter, the said Leslie L. Conner, defendant in this cause, prepared a will for the said plaintiff by the terms of which the said Leslie L.

Conner was appointed attorney for the Estate of A. J. Simler, plaintiff, and the said plaintiff at that tiime had great confidence in the said attorney, Leslie L. Conner, and on or about the 25th day of September, or shortly prior thereto the defendant Leslie L. Conner called the plaintiff [fol. 247] by telephone and asked him to come to the office of the said Leslie L. Conner and advised him that he should come down in connection with re-writing the will of the said A. J. Simler and did not mention any change or modification or clarificatoin of the contract of employment of July 18, 1952. The said plaintiff went alone to the office of Leslie L. Conner, and believing at the time that he was going there for the purpose of some matter in connection with the changing of his will at the suggestion of the said Leslie L. Conner.

7.

This plaintiff shows to this Honorable Court that at that time the offices where Leslie L. Conner officed had on the door and on their stationery "Conner, Hilpirt and Britton", and that he assumed by virtue thereof that it was a law firm and also by virtue of the fact that the letter of July 18, 1952 prepared by Leslie L. Conner uses this language in part: "This confirms our employment of yourself and law firm • • •."

8.

This plaintiff shows that when he arrived at the office of Leslie L. Conner, after a visitation, the defendant suggested that he take the plaintiff to lunch and plaintiff and defendant went to a cafe where beer was served and the defendant herein suggested to the plaintiff that he drink some beer and have lunch which the plaintiff did. Then, after lunch, the plaintiff and defendant, at defendant's suggestion, returned to the law office of the defendant and in the private office of the defendant, Arnold B. Britton, an associate or employee of Leslie L. Conner and Leslie L. [fol. 248] Conner then proceeded to insist upon the plaintiff herein signing the letter dated September 25, 1952 and at that time this plaintiff had no advice other than the advice and admonition given him by his attorneys, Leslie L.

Conner and Arnold B. Britton. That, at that time, the said Leslie L. Conner and Arnold B. Britton told the plaintiff that if he would sign the said letter, they would win for him everything in the estate and annul the will of Birdine Fletcher, and the said plaintiff herein argued with said attorneys and told them that he was willing for them to have a reasonable fee as provided in his letter of July 18, 1952, but that the said attorneys, namely, Leslie L. Conner and Arnold B. Britton continued to harass, harangue and argue with this plaintiff and coerced him and told him that it was to his best interest to sign said second letter on the 25th day of September, 1952.

9.

This plaintiff shows to this Honorable Court that at that time, he was past 74 years of age, had not had experience in litigation, had no way of knowing what was reasonable perceptage-wise or otherwise in connection with the employment of attorneys and knowing that he had already employed said attorneys for a reasonable fee, he continued to resist the demands, arguments, requests and advice of his lawyers to sign said contract or letter of September 25, 1952. This plaintiff further shows that he was worried over said litigation and greatly disturbed and had no one present with whom he could counsel and was not given an opportunity to seek outside or independent advice or counsel. Plaintiff shows that at that time he had great confidence [fol. 249] in the said Leslie L. Conner and that the said Leslie L. Conner knew that this plaintiff was without advice or knowledge concerning said matter and continually and consistently insisted upon the said A. J. Simler signing said letter. This plaintiff further shows that at such time and on said date this plaintiff executed a will prepared by the said Leslie L. Conner in which will the said Leslie L. Conner inserted the following paragraph in Article 9 thereof:

> "I direct that the executor employ my attorney Mr. Leslie L. Conner, 410-415 Hightower Building, Oklahoma City, Oklahoma, as the sole and only attorney for my estate."

10.

This plaintiff further shows to this Honorable Court that he had advised Mr. Conner, the defendant, that he did not wish to have anyone present with him when he executed his will and that the said Leslie L. Conner knew on said occasion that none of the relatives or friends of the said plaintiff were with him or would be with him and it was agreed that he should come to the office alone on said date, nainely, September 25, 1952. This plaintiff further shows that the witnesses to the said execution of said will were as follows: "Ruth Mayhew, Oklahoma City, Oklahoma", who was secretary to Leslie L. Conner, and "Arnold B. Britton, Oklahoma City, Oklahoma", who was either an associate, partner or employee of the said Leslie L. Conner, and "Leslie L. Conner, Oklahoma City, Oklahoma."

11.

That at said time the said Leslie L. Conner had already prepared before the plaintiff appeared in said office, the [fol. 250] letter of September 25, 1952, and that said letter was not the idea, expression or will of this plaintiff, but constituted a prepared instrument by the said Leslie L. Conner before he had even talked to this plaintiff and that the day of the month was blank on said letter and the word *"September"*, then *"——"* *"1952"* was at the end or beginning of said letter. That the said defendant inserted with a pen the figures "25" in said date of the letter. This plaintiff shows to this Honorable Court that said letter did not express a free and mutual consent or a free consent upon the part of the said plaintiff, A. J. Simler. That this plaintiff had no way of knowing, to begin with, what was a reasonable fee, and the letter of July 18, 1952 constituted the contract of employment and there was no consideration whatsoever between the parties for the execution of the letter of September 25, 1952.

12.

This plaintiff further shows that Leslie L. Conner did not sign the said second letter or first letter and did not agree to do anything in the second letter that he was not

bound to do by virtue of the first letter. And, there was absolutely no consideration of any kind, character, nature or description for the execution of the letter of September 25, 1952.

13.

This plaintiff shows to this Honorable Court that the said Leslie L. Conner is a lawyer of many years practice, is a graduate of the University of Oklahoma, licensed by the Supreme Court of Oklahoma, United States Court of [fol. 251] Appeals, Tenth Circuit, United States District Court for the Western District of Oklahoma, and the Supreme Court of the United States, and that this plaintiff only has an Eighth Grade education, was old, worried and disturbed and without advice on said occasion except the advice of the said Leslie L. Conner, and Arnold B. Britton, and that said defendant, Leslie L. Conner took advantage of his client in securing said letter and over-persuaded the said plaintiff to sign the said letter in the private, closed office of the said Leslie L. Conner, and the same did not constitute the will or desire of the said plaintiff, A. J. Simler, but was only the will and desire or expressed only the will and desire of the lawyer who prepared said letter, namely, Leslie L. Conner.

14.

This plaintiff further shows that by virtue thereof said letter is void and void for the further reason that said letter was made and prepared for the benefit of the lawyer and to his advantage and is therefore void and of no force and effect because of the fact that the relationship of attorney and client then existed and the plaintiff had great confidence and respect for the said Leslie L. Conner and his opinion and advice and accepted the same solely in the signing of this letter over his actual protest.

15.

This plaintiff further shows to this Honorable Court that the said Leslie L. Conner is estopped to rely upon said letter or plead the same or receive any benefits by [fol. 252] virtue thereof, and that the said Leslie L. Conner;

in procuring the signature of the said A. J. Simler on said letter, acted fraudulently and in bad faith and was guilty of actual fraud under the circumstances hereinabove shown; and by virtue of such fraud, said letter is void and of no force and effect.

16.

That in addition to the above, this plaintiff shows to this Honorable Court that the circumstances as hereinabove pled under which said letter was signed also show that the defendant was guilty of constructive fraud in the preparation of said letter and securing the signature of the said A. J. Simler thereon and thereto without any advice whatever to the said plaintiff except the advice of Leslie L. Conner and Arnold B. Britton, and by virtue of all the above, the said letter is absolutely void and of no force and effect and the defendant is not entitled to any benefits by virtue thereof or to claim any benefits or interest of any kind by virtue of said letter of September 25, 1952.

17.

This plaintiff shows to this Honorable Court that he always has been willing to pay to the defendant a reasonable attorney fee for his services and that plaintiff, up to this time, has paid to the said defendant Leslie L. Conner, the sum of $24,000.00, and that he believes the same to be reasonable under the circumstances in view of the other sums and circumstances which will hereinafter be set out, but that this plaintiff is not versed in the law and does not know actually what is a reasonable fee and did not know on September 25, 1952 and therefore, he must of necessity, rely [fol. 253] upon the same to be determined in this Court as to whether or not the $24,000.00 heretofore paid is reasonable compensation to the said Leslie L. Conner for his services rendered in said litigation.

18.

This plaintiff specifically denies the allegations in Paragraph 6 of the Cross Complaint and denies that the letter of September 25, 1952 was mutually agreed upon between

the parties, but alleges the true facts to be concerning said letter as hereinabove set out, and alleges and shows that said letter of September 25, 1952 is void and of no force and effect.

19.

This plaintiff further shows that the said will contest, mentioned in Paragraph 7 was lost and the will admitted to probate in the County Court of Oklahoma County, Oklahoma, and on appeal to the District Court, the protest was denied and the will was there admitted to probate and the cause was appealed to the Supreme Court of the State of Oklahoma and again the will was admitted to probate and after the Petition for Rehearing in the cause, the opinion became final. That on or about the 16th day of October, 1952, there was filed in the United States District Court, under Case No. 5619 a case styled "A. J. Simler versus W. H. Wilson, Executor of the Estate of Birdine Fletcher, deceased and The Sisters of St. Francis, a Corporation", asking for a Declaratory Judgment and asking the court, in effect, to declare that the Sisters of St. Francis, a Corporation, could not own or hold real property outside of an [fol. 254] incorporated city or town and to forbid the corporation from attempting to hold the farm formerly owned by Birdine Fletcher in Caddo County, Oklahoma, for the reason that the farm was not reasonably necessary or proper for carrying on the business for which the corporation of "The Sisters of St. Francis" was chartered or licensed and, therefore, the property having been willed to the "Sisters of St. Francis" could not be received by such corporation, and that the plaintiff herein, being the brother of the deceased Birdine Fletcher, was entitled to inherit the said property, and that the defendant in that case filed a Motion to Dismiss Summary Judgment and the same was sustained and the cause was dismissed and appealed to the United States Court of Appeals of the Tenth Circuit, under Case Number 4656, styled "Simler versus Wilson, et al.", cited as 210 Fed. 2d Page 99; and said cause was reversed and judgment was entered in favor of the plaintiff in that cause, who is the plaintiff in this cause, A. J. Simler.

20.

That in said cause in the United States Court of Appeals James E. Grigsby appeared and argued said cause and Leslie L. Conner, Charles W. Conner, Arnold B. Britton and Phil E. Daugherty of Oklahoma City, Oklahoma, were with him on the Brief for the Appellant and said Court held, in effect, that the provisions of the Oklahoma Constitution related to ownership of realty by corporations and provisions of business corporations act of Oklahoma relating to the same subject must be construed together and as so construed they forbid a corporation to take, acquire hold or own realty outside of cities and towns and additions thereto ex- [fol. 255] cept where reasonably necessary and proper for carrying on business for which the corporation was chartered or licensed and such provisions are prohibitory and not merely regulative, citing Oklahoma Constitution, Article 22, Section 2, 18 Oklahoma Statutes 1951, Article 1.30.

21.

This plaintiff now shows to this Honorable Court that after said opinion was rendered by said Court, the appellees therein filed a Petition for Writ of Certiorari in the Supreme Court of the United States, which was by that court denied and said judgment became final.

22.

This plaintiff shows to this Honorable Court that it was not absolutely necessary to raise such question or file such suit in the United States District Court and that the same could have been litigated in the state court without the necessity of going into the United States District Court, and that at the time of the death of Birdine Fletcher by virtue of the laws of the State of Oklahoma and constitutional provisions hereinabove set forth, this plaintiff became immediately the owner of said real estate situated in Caddo County, Oklahoma and the Circuit Court of Appeals of the Tenth Circuit in said opinion mentioned used the following language, in part:

"And the land not being legally and effectively devised, no title vested in the devisees. Instead, title immedi-

ately passed under the law of descent and vested in the appellant as the sole heir at law of the decedent."

23.

This plaintiff admits that a suit was filed in the Su- [fol. 256] preme Court, as alleged in Paragraph 10 of the Cross Complaint and as reflected by Exhibit 12, and as heretofore pled, the plaintiff admits that the Supreme Court of the United States denied certiorari as shown by Exhibit 16, and that Exhibit 17 mentioned in Paragraph 13 of the Cross Complaint, reflects the ruling of the Court in said cause. That a suit was filed as alleged in Paragraphs 15, 16, 17, 18 and 19, and that the exhibits attached to the Cross Complaint reflecting said proceedings are true and correct copies of what they purport.

24.

That certiorari was denied as reflected by Exhibit 20, in the Supreme Court of the United States, and that Court merely used the word "denied" with no opinion or argument thereon.

25.

This plaintiff admits the allegations with reference to the Petition for Certiorari alleged in Paragraph 20, but does not know how famous the lawyers mentioned therein are, but alleges the true facts to be that whatever their fame may be or have been, that he was required to pay them for their services in presenting said case in the Su- preme Court of the United States, together with Fred E. Suits and John B. or J. B. Dudley of Oklahoma City, Oklahoma, and that in all of said litigation mentioned, this plaintiff was required to pay the attorneys opposing him who represented the estate and the Sisters of St. Francis, and that the defendant in this cause did not appear and argue said matter orally in the Supreme Court of the United [fol. 257] States, but merely filed a brief and response, and that the opinion mentioned in Paragraph 20 by the Supreme Court of the United States, was rendered without oral argument and merely upon the briefs, and no person was

required to make a trip to Washington, D. C. in connection therewith. The opinion of the Supreme Court of the United States is, in words and figures as follows, to-wit:

"The Petition for Writ of Certiorari is granted. The judgment of the Court of Appeals is vacated and the judgment of the District Court reinstated."

26.

This plaintiff shows that he was required to pay the attorneys who secured said opinion which included Porter R. Chandler and Davis, Polk, Wardwell, Sunderland and Kiendl, all of New York City, and Fred E. Suits and J. B. Dudley, both of Oklahoma City, Oklahoma for the petitioners.

27.

The plaintiff admits the proceedings mentioned in Paragraph 21 and that the case was appealed to the Supreme Court of the State of Oklahoma, and is cited in 308 Pac. 2d, Page 304, as shown by Exhibit 32 attached to the defendant's Cross Complaint.

28.

This plaintiff admits that proceedings were had as shown and pled in Paragraph 23 of the Cross Complaint, as reflected by Exhibit 33 and Paragraph 24 of Exhibit 34, with reference to Paragraph 25 of the Cross Complaint.

29.

This plaintiff shows to this Honorable Court that on or [fol. 258] about May 22, 1957, the plaintiff and defendant entered into said agreement merely for the purpose of compromising or disbursing money with the strict agreement that the same would not be used and that said agreement would in no wise be used either for or against either of the parties, and that said agreement provides, among other things:

"Now, therefore, without prejudice to the claims, contentions or agreement of either Leslie L. Conner or

A. J. Simler with reference to said attorney's fees, it is agreed as follows:

First. That this instrument and agreement shall in no wise be considered by any of the parties hereto as a construction of the agreement with reference to attorney's fees between Leslie L. Conner and A. J. Simler, and this agreement shall not be offered as evidence in any court by either of the parties hereto or any other person or the heirs, executors, assigns or administrators of any of the parties hereto. It is understood between the parties that this agreement simply is made so that the money now on hand can be used in pa[illegible] and as hereinafter set out by the parties hereto".

Said exhibit being attached to the defendant's Cross Complaint as Number 35 and was made with the strict understanding and upon the honor and integrity of the parties herein involved that the same would neither be used in any shape, form or fashion by either of the parties in any litigation.

30.

This plaintiff shows that the said Leslie L. Conner has breached said agreement by attaching the same thereto as Exhibit 35 and pleading the same in this cause and attempting to gain advantage over this plaintiff, and that said exhibit should be stricken and not exhibited by the Court and that said agreement further provided, in part, as follows, and on Page 2 thereof, all future oil payments from the aforesaid described land shall be paid to A. J. Simler.

[fol. 259]

31.

This plaintiff further shows that the said Leslie L. Conner breached that part of said agreement by causing all oil runs to be tied up or held by the Phillips Petroleum Company, and that said funds have been accumulating on account thereof and that this plaintiff has not been permitted to receive said runs which are justly, legally, and rightfully his, and that the said plaintiff herein, A. J. Simler, has suffered great loss thereby.

31.

This plaintiff shows that the statutes of the State of Oklahoma provide that neither party can use against the other any statement in an effort to compromise any matter and for such reason said exhibit is wholly incompetent and should not be considered by this Court in determining this matter.

32.

This plaintiff specifically denies that the defendant was on a 50% basis as alleged in Paragraph 26 of his Cross Complaint and specifically denies that the defendant is entitled to 50% or any other percentage of the property of this plaintiff and alleges and states that the only sum to which the defendant is entitled is a reasonable attorneys fee and that the defendant should not attempt to claim an unreasonable fee, but that the defendant is attemping to take advantage of this plaintiff and collect an unreasonable fee and take the property which belongs to this plaintiff and which became his property upon the death of his sister, Birdine Fletcher.

33.

This plaintiff, with reference to Paragraph [illegible] of the [fol. 260] Cross Complaint, denies that he did not own or have any right, title and interest in and to the 160-acre farm described, but that he became the sole owner thereof upon the death of his sister, and that the question presented to the Court of Appeals, Tenth Circuit, as reflected by 210 Fed 2d. Page 99, Simler v. Wilson, was not a difficult question, but was a simple question of the fact that the corporation under the Constitution and Laws of Oklahoma, could not take, acquire, hold or own realty outside of cities and towns and additions thereto except where reasonably necessary and proper for carrying on business for which the corporation was chartered or licensed, and that such provisions are prohibitory, not merely regulative and that such simple questions simply were that since the Sisters of St. Francis was a corporation, operating a hospital in Oklahoma City, Oklahoma, it could not take or

hold said farm and that the question was not novel and extremely difficult, but was actually a simple lawsuit.

34.

This plaintiff, with reference to Paragraph 20 of the Cross Complaint, denies that he was beset with legal disadvantages merely because the Sisters of St. Francis was a Catholic religious society and operated a hospital in Oklahoma City, Oklahoma.

35.

This plaintiff specifically denies that he filed a guardianship case against his sister in 1950 in an attempt, during her lifetime, to obtain possession of her property and that he failed in said action, but alleges the true facts to be that [fol. 261] his sister, at such time, was in a poor state of health, mentally and physically, and that he filed a Petition for Appointment of a Guardian, asking the Court to appoint him or any other suitable person to be guardian and that he told the County Judge to appoint any person that he saw fit and that the judge, after a full and complete hearing, held that Birdine Fletcher was incompetent to handle her affairs and appointed the Fidelity National Bank of Oklahoma City, as her Guardian without any objection or protest upon the part of A. J. Simler. That plaintiff was acting in the utmost good faith to help and aid his sister during her incompetency which the County Court found to exist when she was fully represented by counsel and after hearing many expert witnesses and medical doctors as to her condition and that when she filed an application to be restored to competency, the said A. J. Simler appeared in Court and told the County Judge that if the judge thought she was mentally competent to look after her affairs, that he had no objection whatever to her being restored, that he was only acting for her interests and not his own. That the said A. J. Simler testified in such last case that his sister had shown improvement and that, the County Judge then restored her to competency. That said proceedings somewhat irritated his sister, Birdine Fletcher, and that he believes that she was later influenced and that,

as a result, she did not leave to him her property when she and the officials of the Sisters of St. Francis, or employees, prepared the will for Birdine Fletcher, deceased.

36.

This plaintiff now shows that after said guardianship [fol. 262] proceedings, Birdine Fletcher gave this plaintiff a check for $500.00 as a gift and that she then realized he had acted for her best interests, but later when she became ill and was in said hospital, he believes and therefore alleges that she was unduly influenced against him, but that the said Leslie L. Conner and his associate counsel lost the will case under such circumstances.

37.

This plaintiff, with reference to Paragraph 29, specifically denies that the defendant paid out additional rent or paid additional money to employees on account of handling the litigation involved and mentioned in the Cross Complaint, but alleges the true facts to be that the said Leslie L. Conner carried on his regular law practice in the same manner as he would have carried it on and with the same compensation he would have received had he not handled the case of this plaintiff, and shows that in addition thereto, that the said Leslie L. Conner told this plaintiff that he would have to hire or did hire a special stenographer for a short time and asked this plaintiff to pay him therefor, which the said plaintiff did pay to the defendant herein.

38.

This plaintiff denies the allegations in Paragraph 30 of the Cross Complaint and shows to this Court in connection therewith that this plaintiff paid to Leslie L. Conner money for traveling expenses, hotel bills in Denver, Colorado and other places and paid for a trip for Arnold Britton to go to El Paso, Texas, and that Leslie L. Conner charged [fol. 263] this plaintiff with his own personal expenses in going to Denver and other places in connection with this matter and this plaintiff specifically denies that Leslie L. Conner ever went to Washington, D. C. to the Supreme

Court of the United States on any matter connected with the litigation herein and that neither lawyer appeared before the Supreme Court of the United States, and that if Leslie L. Conner went to Washington, D. C., he went on some other matter, and no business connected with any litigation pertaining to the Birdine Fletcher Estate or this plaintiff.

39.

This plaintiff denies specifically that the defendant, Leslie L. Conner or anyone associated with him put in five years of work and labor in this cause, but alleges the true facts to be that his work was very spasmodic and did not require very much work or labor in connection with this case, and no expense unknown to this plaintiff, and plaintiff shows that he has paid out as expenses in this case and paid to Leslie L. Conner for expenses large sums of money, the exact amount of which at this time is unknown to this plaintiff, but will be well known to the defendant, and the said defendant has a record thereof or should have, and that the said Leslie L. Conner carried on his law practice as usual during said litigation and looked after his practice in the usual normal and ordinary way.

40.

This plaintiff shows to this Honorable Court that he has been continually harassed, harangued, embarrassed and [fol. 264] annoyed by the said Leslie L. Conner and his associates in that James E. Grigsby, one of the associates of Mr. Conner, sued the said A. J. Simler, attached his real property and that the case was removed to the United States District Court for the Western District of Oklahoma, and that the said A. J. Simler was forced to employ other counsel to represent him in said suit and did employ John B. Ogden to represent him therein and to assist Leslie L. Conner in the conclusion of the estate case with reference to the payment of attorney fees, administrator's costs etc., in the District Court of Oklahoma County, Oklahoma, and the Supreme Court of the State of Oklahoma, and paid the said John B. Ogden $7500.00 for his services in con-

nection therewith and in order to settle the lawsuit with James E. Grigsby and attempt to get his runs or production from his farm released, settled said case with the said James E. Grigsby for the sum of $12,800.00 and took an assignment from the said James E. Grigsby for 28% of the attorneys fee which would become due to Leslie L. Conner and that Leslie L. Conner had assigned to James E. Grigsby 28% of his fee which this plaintiff now owns and that the said 28% was assigned over to the said A. J. Simler by the said James E. Grigsby and the said A. J. Simler paid the said James E. Grigsby $12,800.00 for the same.

41.

This plaintiff shows that thereafter, Arnold B. Britton, another associate or employee or partner of the said Leslie L. Conner, sued the said A. J. Simler, attached his farm and the case was removed to the United States District Court [fol. 265] of the Western District of Oklahoma, and that the said A. J. Simler was forced to defend said action and that he did defend the same and had counsel appear in both the Grigsby Case and the Britton Case and contest the same, attend various motions, pre-trial conferences, and that the said A. J. Simler was forced to make many trips from his home in Little Rock, Arkansas at great expense, annoyance and inconvenience to defend said cases which the said associates, employees or partners of the said Leslie L. Conner filed against him, and that the said Conner could not control said parties and admitted that he could not control his own partners and associates and that by virtue thereof, this plaintiff has expended large sums of money and has been continually troubled and harassed by virtue thereof, and by virtue of having the runs from his property impounded by the Phillips Petroleum Company and the same is still impounded, this time, however, by virtue of the conduct of the said defendant, Leslie L. Conner.

42.

This plaintiff shows to this Honorable Court that at this time he is 81 years of age and that such annoyance, harassment and expense has caused him great anxiety and dis-

turbance and that the said Leslie L. Conner failed in his duties either in associating said parties in said litigation and in failing to control said parties and the said Leslie L. Conner wrote a letter to this plaintiff on October 4, 1955, which is in words and figures, as follows:

[fol. 266] "October 4, 1955

Mr. A. J. Simler
R. R. #3
Box 334
North Little Rock, Arkansas

Dear Mr. Simler:

Enclosed find our copies, which we have made and enclose, of the following pleadings filed in the Phillips case.

A. Answer and Counterclaim of Phillips Petroleum Corporation in which they state that Wilson and the Sisters are still claiming interest.

B. Separate Answer of James E. Grigsby.

C. Motion for Production of Document.

D. Notice to take Deposition on Oral Examination.

I have been out of the city for the past few days and on my return, I found these papers: Notice to produce documents and contract, and Notice to take your deposition. According to the certificate he mailed your copy, which you probably have by now. Under the federal rules you are required to be present in person for the taking of the deposition on the date set out in the notice or, have it continued.

Since we are not informed as to your recent conversations with Mr. James E. Grigsby, relative to his employment, and in as much as he has filed an answer and counterclaim without our consent or approval, and which we do not believe is a proper part of this case, and since you think there is a question about the attorneys' fee due, it is our suggestion that you engage counsel to represent you in the question of Grigsbys' Cross-Petition about his fee matter, only, and we will

continue to represent you and do our best to bring this original litigation to a conclusion.

Due to the urgency of this matter, we are sending a copy to Mr. Kenneth Coulter, Court House, Little Rock, Arkansas and we suggest that you advise us immediately as to your decision in this matter.

Yours truly,

CONNER, HILPIRT & BRITTON

By LESLIE L. CONNER

LLC:djh
Enc.

P.S. Under separate copy we are sending you a copy of the Answer Brief in the Sisters' and Wilsons' Petition for Certiorari in the Supreme Court of the United States"

[fol 267] 43.

This plaintiff further shows to this Honorable Court that after he signed the letter prepared by Leslie L. Conner under the circumstances hereinabove set out on the 25th day of September, 1952, that he advised the said defendant that he would not proceed under said letter, and that the same was unfair, unjust and was not binding upon him and that he would only pay Leslie L. Conner, a reasonable fee and that was the only condition under which he would proceed with said litigation and that the said Leslie L. Conner, in the presence of Arnold Britton, James E. Grigsby and Phil E. Daugherty, tried to get the said plaintiff herein to sign a deed for one-half of the farm of this plaintiff, or 80 acres, and this plaintiff told all of said parties in the private office of Leslie L. Conner that he would not pay 50% or give up half of his farm under any conditions whatsoever, and that said lawyers then attempted to get him to sign said deed and he steadfastly refused and told all the lawyers he was not bound by a 50% agreement, and that if they did not want to proceed on reasonable fee terms, he would quit and would not under any conditions pay 50% or one-half of his property, but would only pay a rea-

sonable fee and that finally, after the said Simler and the parties had remained in the office for approximately an hour or more, Mr. Phil E. Daugherty stated "Simler definitely isn't going to sign this and there is no use to talk with him further about it."

44.

This plaintiff shows now that the said Phil E. Daugherty [fol. 268] made the said statement quoted in Paragraph 43 above at least twice, and finally, after more than one hour of haranguing this plaintiff, said meeting was adjourned, and this plaintiff now shows that after the said Leslie L. Conner knew of said matter and proceeded to represent the plaintiff thereafter that he then became estopped to claim or assert anything other than the reasonable lawyer fee, and that was the basis upon which he was employed to begin with and the basis upon which he represented Mr. Simler during the litigation.

45.

This plaintiff shows that Kenneth Coulter mentioned in the letter quoted below, was the son-in-law of the said A. J. Simler, plaintiff in this cause, and was Court Reporter at Little Rock, Arkansas in the Chancellor Court, but that the said Kenneth Coulter is now deceased, but that during his lifetime, he advised Mr. Conner that Mr. Simler would not and should not pay anything other than a reasonable fee and that if the said defendant wanted anything more than a reasonable fee, that he should not proceed further as attorney for the plaintiff herein. Mr. Coulter's letter above mentioned is quoted below as follows, as written by the said defendant, Leslie L. Conner:

October 24, 1955

"Mr. Kenneth Coulter
Court House
Little Rock, Arkansas

Dear Mr. Coulter:

Your letter of October 21 is acknowledged and you are advised that Mr. James E. Grigsby has not been fired from our staff.

We agree that the constant threat of litigation is [fol. 269] most annoying, and if you and Mr. Simler think that an advancement to Mr. Grigsby, without prejudice to anyones rights would be advisable, we would cooperate.

We are sorry to learn of Mrs. Simlers illness and trust that she is improved. Please advise us.

Yours very truly,

(Signed) LESLIE L. CONNER"

LLC/ab
cc A. J. Simler

46.

This plaintiff further shows that, finally, his patience was exhausted on account of all the litigation and lawsuit and harassment and that he discharged the defendant by written letter, and that after said time, the parties agreed that the said Conner could continue without any prejudice to his rights or the rights of this plaintiff in connection with the settlement of the lawyer fee, and that he was permitted to continue at the suggestion of John B. Ogden, attorney for the plaintiff herein, and it was distinctly agreed and understood that it should be without any prejudice to the rights of the defendant or of the plaintiff with reference to a lawyer fee in this cause.

47.

This plaintiff, now shows, however, that at all times shortly after the letter of September 25, 1952 was written, the said Conner knew that the said plaintiff in this cause would not agree to anything other than a reasonable fee and refused to recognize the letter of September 25, 1952.

48.

This plaintiff further shows that he wrote a letter on [fol. 270] the 16th day of December, 1955 to the said Leslie L. Conner, and sent the same by registered mail and that the said Conner received the same, which letter is in words and figures as follows, to-wit:

"Oklahoma City, Oklahoma
December 16, 1955

Mr. Leslie L. Conner
Attorney at Law
Hightower Building
Oklahoma City, Oklahoma

Dear Sir:

Affirming our telephone conversation of this A.M. in which you definitely refused to commit yourself as to the amount of attorneys fees you would accept as my counsel, and further, because of dissension among your force, I believe it impossible for you or your force to serve my best interest, and I am compelled, (much as I regret it), to dispense with your services, as of this date.

Yours truly,

(Signed): A. J. SIMLER"

49.

This plaintiff shows to this Honorable Court that the said Grigsby and Conner became either quarrelsome with each other or disagreed for some cause, and each one would call or write the plaintiff, criticizing the other, and would either come or send people to Little Rock in an effort to gain an advantage over the other.

50.

This plaintiff shows that the defendant suggested that the said plaintiff employ counsel to represent him and this plaintiff shows that he wrote Leslie L. Conner on September [fol. 271] 29, 1955, and advised him specifically as to previous statements and conduct of the said Leslie L. Conner, which letter is in words and figures as follows:

"No. Little Rock, Arkansas
September 29, 1955

Mr. Leslie Conner,
414 Hightower Building,
Oklahoma City, Oklahoma

Dear Sir:

Yours of 9/19 to hand, and in reply will say as to your understanding of my statement of Dec. 10, 1954, when four of five of you attys. tried to high pressure me into signing a deed to 80 acres of the farm, and my refusal, you will recall that upon a question from Mr. Griggsby as what I intended to do, I replied that the only contract I recognized was the one containing the proposition that you yourself, Mr. Conner, made to represent us in this case. That one was for a reasonable fee & if we could not agree as to a reasonable fee we would let the Co. Court or any other court decide a reasonable fee. As to your hiring other lawyers, that was your own proposition. It is no fault of mine that you were not big enough to handle this case. As you must recall, I, thru Mr. Coulter, attempted to get you to discuss this proposition about August 30th, 1954 and you flew into a rage, stating that when the case was finally settled was time enough to talk fees. So your statement that you did not know of my dissatisfaction as to your claim of fifty per cent was grossly in error.

Furthermore, I now direct, as I have told you before, not to file any more law suits against Phillips Petroleum Company or anybody else without specific instructions from me.

Again assuring you of my willingness to be more than fair in this matter I am

Yours very truly;

(signed) A. J. Simler
Route 3, Box 334
No. Little Rock, Ark."

51.

On August 31, 1955, the plaintiff wrote the defendant a letter which was received by the defendant, and which is [fol. 272] in words and figures as follows, to-wit:

"North Little Rock, Arkansas
August 31, 1955

Mr. Leslie L. Conner,
414 Hightower Building,
Oklahoma City, Oklahoma

Dear Mr. Conner:

I am in receipt of your letter of August 25 inclosing checks which is figured upon a fifty per cent fee to you. You urged me to make such an agreement on December 10th last, and to sign a quitclaim deed to that effect which proposition I refused. You are advised that my position remains as it has always been; I will not convey to you, as a part of your fee, any part of this realty. The contract of July 18, 1952 provides for a reasonable fee, and if we are unable to agree upon what constitutes a reasonable fee, I am willing to leave it to the Court, as per said contract. The proposition was made by you, accepted by me, and your proposition now comes as a surprise. Please remember that, at considerable expense to us, we lost completely in the Oklahoma state courts.

I am considering submitting this matter to an unbiased and unprejudiced attorney. In that connection I would like to have the following:

1. Copy of motion of Phillips Petroleum Company to pay over the money in their hands;
2. Order upon such motion;
3. Photostatic copy of contract of July 18, 1952;
4. Photostatic copy of contract of September 25, 1952;
5. Photostatic copy of other contracts, if any, relating to fee.

You will recall that I executed a will, which I believe was in the latter part of September, 1952, which I left in your safekeeping. Please send this to me:

Very truly yours,

(Signed) A. J. SIMLER"

[fol. 273] 52.

This plaintiff further shows to this Honorable Court that he received a letter from the defendant in regard to the case of Britton versus Simler, wherein Mr. Britton had sued Mr. Simler, claiming a large lawyer fee against him, and that Mr. Simler was forced to and did employ counsel to represent him in said cause, and the defendant, Leslie L. Conner, did not represent him therein but did make a suggestion in the matter and said letter referred to said cause from the defendant Leslie L. Conner is in words and figures as follows, to-wit:

"November 9, 1956

Mr. Phil E. Daugherty,
Lawyer,
First National Building
Oklahoma City, Oklahoma

Mr. John B. Ogden,
Lawyer,
Liberty Bank Bldg.,
Oklahoma City, Oklahoma

Gentlemen:

Re: Britton v. Simler

We learned today that this case is set on the pre-trial docket before Judge W. R. Wallace on November 16, 1956.

We enclosed the original letter from Britton to Simler which Mr. Ogden sent us after Mr. Simler mailed it to him.

When I talked to Britton about this and before the suit was filed he told me that Mr. Simler had agreed

to pay him a fee and employed him when he went to Arkansas to see Mr. Simler last year.

However, in this letter he says Mr. Simler employed him in January 12, 1956 and in the rth paragraph of the letter he says Mr. Simler agreed that a substantial fee had been earned when he visited Mr. Simler in his home in Arkansas.

In the complaint he alleges that he was employed on [fol. 274] July 18, 1952 and performed legal services to March 1956 when he without notice left me and that in May 1956 that Simler discharged him.

It seems that either deposition should be taken or interrogatories should be served to definitely get his claim. However, this is merely a suggestion to you.

Yours truly,

(Signed): Leslie L. Conner"

53.

This plaintiff further shows to this Honorable Court with reference to the litigation in the United States Circuit Court of Appeals, Tenth Circuit, reported in 210 Fed. 2d, beginning at Page 99, that in the trial court, namely the United States District Court of the Western District of Oklahoma at Oklahoma City, Oklahoma, there was no evidence offered. The matter was disposed of by motion and ruling of the court and not one witness on either side was produced or testified. That it was not a trial that even required the listening to one witness on either side, but was merely a simple question of law plainly written in the Constitution and Statutes of the State of Oklahoma, and that the said Leslie L. Conner did not even appear in Denver in the United States Court of Appeals and argue said matter, but that James E. Grigsby argued said matter in the Court of Appeals in Denver, and that the plaintiff herein paid his expenses for going to Denver to argue said matter, and that on September 11, 1953, the said defendant, Leslie L. Conner, wrote plaintiff with reference thereto, which letter is in words and figures as follows:

[fol. 275]

"September 11, 1953

Mr. A. J. Simler
Rural Route #3
Box 334
North Little Rock, Arkansas

Dear Mr. Simler:—

Enclosed find speech which James E. Grigsby made before the Circuit Court of Appeals at Denver on Thursday September 10, 1953. I received a call from Mr. Grigsby last night from Denver, and he said the speech and argument was very well received by the Court. We should have an opinion from the Court in this case within the next 60 days.

We will keep you advised.

Yours truly,

(Signed) "Leslie L. Conner R"
Conner, Hilpirt & Britton"

54.

This plaintiff most respectfully shows that Conner, Hilpirt and Britton used the name of "Conner, Hilpirt and Britton" on its letterheads and also had the name on the letterheads of Leslie L. Conner, Charles W. Conner, A. L. Hilpirt, and Arnold B. Britton, leading this plaintiff to believe that the firm was representing him, but the plaintiff has learned since that Mr. Hilpirt was deceased for the greater part of the time, and although the letters were signed, as indicated above, "Conner, Hilpirt & Britton", the said Hilpirt was deceased and the plaintiff has been informed and verily believes, having received his information from Leslie L. Conner, that Mr. Britton was not even a member of the firm, and that such conduct on the part of the defendant mis-led the plaintiff herein.

[fol. 276] 55.

This plaintiff now shows to this Honorable Court that many of the suits filed by the firm mentioned in Paragraph 54 herein were unnecessary, and only created expense which this plaintiff was forced to pay, and which suits were eventually lost, and that this plaintiff paid all expenses in the Supreme Court of the State of Oklahoma on the will contest, which was lost, and that actually, the only case that was won was the case of "Simler vs. Wilson", reported in 210 Fed. 2d, Page 99, supra, and in the Supreme Court of Oklahoma, on the question of costs and attorneys fees, the Supreme Court held, in effect, that the plaintiff in this cause should not be required to pay the bequest under the terms of the will of the late Birdine Fletcher, his sister, which bequest had already been paid and that under the terms of the will, it was construed that she intended that the bequest be paid out of her personal property money and bonds on hand, but the said plaintiff was required to pay all the attorneys fees, costs of administration and taxes, which amounted to more than $100,000.00.

Wherefore, having fully answered herein and replied to the Counterclaim, this plaintiff prays that the prayer of the Counterclaim and the Counterclaim of the defendant, Leslie L. Conner be denied and this Court fix a reasonable attorneys fee for the defendant herein and determine what is a reasonable fee under the circumstances and under the evidence, and that plaintiff have his costs herein expended, for such other relief as may appear proper, whether [fol. 277] legal or equitable, general or specific, to which the evidence may show him entitled.

John B. Ogden, 1408-1411 Liberty Bank Building, Oklahoma City, Oklahoma, Attorney for Plaintiff.

Certificate of Service (omitted in printing).

[fol. 278] *Duly sworn to by A. J. Simler, jurat omitted in printing.*

[fol. 279]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

No. 8008—Civil

[Title omitted]

REQUEST FOR JURY TRIAL—May 14, 1959

Comes now the above named plaintiff, A. J. Simler, and shows to the Court that he has heretofore requested a jury trial in this cause and that he now again requests that this cause be submitted to a jury to determine the facts herein and hereby specifically requests a jury trial in this cause.

Dated this the 14th day of May, 1959.

A. J. Simler, Plaintiff, By John B. Ogden, 1408-1411 Liberty Bank Bldg., Oklahoma City, Oklahoma, Attorney for Plaintiff.

Certificate of Service (omitted in printing).

[fol. 281] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

No. 8008—Civil

[Title omitted]

AMENDED REPLY TO DEFENDANT'S COUNTERCLAIM—
Filed June 30, 1959

Comes now the above named plaintiff, A. J. Simler, and for his amended reply to defendant's counterclaim and shows to this Honorable Court as follows:

That heretofore this plaintiff filed a reply to the defendant's counterclaim as authorized and directed by this Court and which reply consisted of 34 pages and approximately 55 paragraphs. That thereafter the defendant filed a motion to strike a major portion of said paragraphs, all as more fully appears from the motion filed by the defendant to strike and on file in this cause.

Thereafter, this Court, in passing upon said motion issued a letter to the attorneys in this cause which letter is in words and figures as follows, to-wit:

"Gentlemen:

At the time of our last hearing several matters were taken under advisement. The court now wishes to make the following rulings:

(1) Plaintiff's motion to strike or suppress the deposition of certain employees of Phillips Petroleum should be OVERRULED.

(2) Defendant's motion to strike from reply should be OVERRULED as to paragraphs 3, 4, 5, 6, 7, 8, 9, 11, 13, 14, 15 and 16 but should be SUSTAINED as to paragraphs 10, 12, 17, 19, 20, 21, 22, 24, 25, 26, 29, 30, both paragraphs 31 of page 16, 32, 33, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54 and 55.

[fol. 282] (3) Plaintiff is directed to file an amended reply to defendant's counterclaim which omits the paragraphs which have been stricken above.

Furthermore, the court has concluded that the matters raised herein are properly triable by jury and will be tried on August 24th.

The court will permit the introduction of both letters in question as representing the contract between Mr. Simler and Mr. Conner, and the issues to be resolved by the jury are whether this contingent fee contract was made in good faith, without fraud or overreaching by Mr. Conner and whether the compensation bargained for was just and fair. If the jury determines that the two letters in question are enforceable then the terms therein will control. However, if for any reason, the jury strikes down the second letter as having been gained through fraud or overreaching then the jury will have to determine just what constitutes a reasonable fee under the circumstances.

Very truly yours,

/s/ W. R. Wallace

> A copy of this letter is being mailed to Mr. Davis, the Court Clerk, and he is directed to enter minute orders which conform with this letter."

and which letter was received by plaintiff's counsel, John B. Ogden, on June 22, 1959. This plaintiff shows to this Court that he feels that this Court should not have sustained said motion as to the paragraphs quoted above, for the reason that this plaintiff feels that this denies to him his substantial rights in this case and prevents him from having a fair and impartial trial herein, and he therefore most respectfully wishes to show herein that he strenuously and seriously objects to said order and to the striking of said paragraphs and excepts to the ruling of the Court in striking said paragraphs, but in obedience to and in accordance with the direction of this Court and without waiving any of his rights, files this, an amended reply to the counterclaim of the defendant Leslie L. Conner, and for such amended reply, alleges and states:

[fol. 283] I.

This plaintiff specifically denies that he entered into an agreement on September 25, 1952 for the purpose of clarifying the terms of the contingent fee contract entered into on July 18, 1952 between the plaintiff and the defendant, Leslie L. Conner.

II.

This plaintiff shows to this Honorable Court that the true facts with reference to the letter dated September 25, 1952 and referred to in Paragraph 2 of the Counterclaim are as follows.

III.

This plaintiff shows that heretofore and on or about July 18, 1952, he was introduced to the defendant, Leslie L. Conner, and the plaintiff had not prior thereto known the said Leslie L. Conner and that on said date the plaintiff and defendant discussed employment by the plaintiff of the said defendant to represent this plaintiff as his attorney

in a certain will contest case then filed and pending or about to be filed in the County Court of Oklahoma County, Oklahoma, involving the will of plaintiff's deceased sister, Birdine Fletcher. That at the time of the death of Birdine Fletcher, she owned real property in Oklahoma City, Oklahoma, personal property, bonds, notes and securities and the real estate consisted of a farm located in Caddo County, Oklahoma and described in the Counterclaim of the defendant herein.

IV.

This plaintiff now shows that after a conference with the said Leslie L. Conner, he signed a letter of employment prepared by the said defendant and dated July 18, 1952, which letter of employment or copy thereof is pled in the [fol. 284] Counterclaim on file herein and in which and by the terms of which the said Leslie L. Conner was to receive for his services a reasonable fee and this plaintiff was to pay the cost of the litigation which might or would thereafter ensue, all as more fully appears from a copy of said letter pled herein, and which said letter of employment is in words and figures as follows, to-wit:

"July 18, 1952.

Mr. Leslie L. Conner, Atty.
410-414 Hightower Bldg.,
Oklahoma City, Oklahoma

Dear Sir:—

Re: Birdine Fletcher Estate
County Court,
Oklahoma County, Okla.

This confirms our employment of yourself and law firm to represent us in the matter of the Estate of Birdine Fletcher, deceased, now pending in the County Court of Oklahoma County, Oklahoma, wherein certain people have filed petition to probate an alleged will supposed to be signed by her."

We agree to pay all the witness fees, court costs, furnish all bonds, purchase copy of all records from

court reporters, prepare the evidence and pay all necessary bills to contest the admission of this will to probate because we do not believe it is a valid will. We understand that this will run in the neighborhood of approximately $1,000.00.

We also agree to pay you and your firm a reasonable attorneys fee for the services rendered and to be rendered in this case in the County Court, and if necessary, in the District Court and if necessary in the Supreme Court of the State of Oklahoma, which fee may be set by the County Court or any other court if the matter is successful either by trial or judgment or compromise. If the matter is not won, compromised or settled, you are not to charge us a fee.

Yours truly,

/s/ A. J. SIMLER

A. J. Simler, for himself and his children"

V.

This plaintiff now shows to this Honorable Court that [fol. 285] after the execution of said letter by the plaintiff, the relationslfip of attorney and client then existed and that the said defendant then became the attorney for the plaintiff and began representing the said plaintiff as his attorney in connection with the said estate or will contest.

VI.

This plaintiff shows that thereafter, the said Leslie L. Conner, defendant in this cause, prepared a will for the said plaintiff by the terms of which the said Leslie L. Conner was appointed attorney for the estate of A. J. Simler, plaintiff, and the said plaintiff at that time had great confidence in the said attorney, Leslie L. Conner, and on or about the 25th day of September, or shortly prior thereto, the defendant Leslie L. Conner called the plaintiff by telephone and asked him to come to the office of the said Leslie L. Conner and advised him that he should come down in

connection with re-writing the will of the said A. J. Simler and did not mention any change or modification or clarification of the contract of employment of July 18, 1952. The said plaiatiff went alone to the office of Leslie L. Conner, and believing at the time that he was going there for the purpose of some matter in connection with the changing of his will at the suggestion of the said Leslie L. Conner.

VII.

This plaintiff shows to this Honorable Court that at that time the offices where Leslie L. Conner officed had on the door and on their stationery "Conner, Hilpirt and Britton" and that he assumed by virtue thereof that it was a law firm and also by virtue of the fact that the letter of July 18, 1952 prepared by Leslie L. Conner, uses this language in part: "This confirms our employment of yourself and law firm * * *"

[fol. 286] VIII.

This plaintiff shows that when he arrived at the office of Leslie L. Conner, after a visit, the defendant suggested that he take the plaintiff to lunch and plaintiff and defendant went to a cafe where beer was served and the defendant herein suggested to the plaintiff that he drink some beer and have lunch, which the plaintiff did. Then, after lunch, the plaintiff and defendant, at defendant's suggestion, returned to the law office of the defendant and in the private office of the defendant Arnold B. Britton, an associate or employee of Leslie L. Conner, and Leslie L. Conner then proceeded to insist upon the plaintiff herein signing the letter dated September 25, 1952 and at that time this plaintiff had no advice other than the advice and admonition given him by his attorneys, Leslie L. Conner and Arnold B. Britton. That, at that time, the said Leslie L. Conner and Arnold B. Britton told the plaintiff that if he would sign the said letter, they would win for him everything in the estate and annul the will of Birdine Fletcher, and the said plaintiff herein argued with the said attorneys and told them that he was willing for them to have a reasonable fee as provided in his letter of July 18, 1952 but that the

said attorneys continued to harass, harangue and argue with this plaintiff, and coerced him and told him that it was to his best interest to sign said second letter on the 25th day of September, 1952.

IX.

This plaintiff shows to this Honorable Court that at that time, he was past 74 years of age, had not had experience in litigation, had no way of knowing what was reasonable, percentage-wise or otherwise in connection with the employment of attorneys and knowing that he had already [fol. 287] employed said attorneys for a reasonable fee, he continued to resist the demands, arguments, requests and advice of his lawyers to sign said contract or letter of September 25, 1952. This plaintiff further shows that he was worried over said litigation and greatly disturbed and had no one present with whom he could counsel and was not given an opportunity to seek outside or independent advice or counsel. Plaintiff shows that at that time he had great confidence in the said Leslie L. Conner and that the said Leslie L. Conner knew that this plaintiff was without advice or knowledge concerning said matter and continually and consistently insisted upon the said A. J. Simler signing said letter. This plaintiff further shows that at such time and on said date this plaintiff executed a will prepared by the said Leslie L. Conner in which will the said Leslie L. Conner inserted the following paragraph in Article 9 thereof:

> "I direct that the executor employ my attorney Mr. Leslie L. Conner, 410-415 Hightower Building, Oklahoma City, Oklahoma, as the sole and only attorney for my estate."

X.

That at said time the said Leslie L. Conner had already prepared before the plaintiff appeared in said office, the letter of September 25, 1952, and that said letter was not the idea, expression or will of this plaintiff, but constituted a prepared instrument by the said Leslie L. Conner before

he had even talked to this plaintiff and that the day of the month was blank on said letter and the word "*September*", then "——", "*1952*" was at the end or beginning of said letter. That the said defendant inserted with a pen the figures "25" in said date of the letter. This plaintiff shows to this Honorable Court that said letter did not express a [fol. 288] free and mutual consent or a free consent upon the part of the said plaintiff, A. J. Simler. That this plaintiff had no way of knowing, to begin with, what was a reasonable fee, and the letter of July 18, 1952 constituted the contract of employment and there was no consideration whatsoever between the parties for the execution of the letter of September 25, 1952.

XI.

This plaintiff shows to this Honorable Court that the said Leslie L. Conner is a lawyer of many years practice, is a graduate of the University of Oklahoma, licensed by the Supreme Court of Oklahoma, United States Court of Appeals, Tenth Circuit, United States District Court for the Western District of Oklahoma, and the Supreme Court of the United States, and that this plaintiff only has an eighth grade education, was old, worried and disturbed, and was without advice on said occasion except the advice of the said Leslie L. Conner and Arnold B. Britton, and that said defendant took advantage of his client in securing said letter and over-persuaded the said plaintiff to sign the said letter in the private, closed office of the said Leslie L. Conner, and the same did not constitute the will or desire of the said plaintiff, A. J. Simler, but was only the will and desire or expressed only the will and desires of the lawyer who prepared said letter, namely, Leslie L. Conner.

XII.

This plaintiff further shows that by virtue thereof said letter is void and void for the further reason that said letter was made and prepared for the benefit of the lawyer and to his advantage and is, therefore, void and of no force and effect because of the fact that the relationship of attorney and client then existed and the plaintiff had great

[fol. 289] confidence and respect for the said Leslie L. Conner, and his opinion and advice, and accepted the same solely in the signing of this letter over his actual protest.

XV.

This plaintiff further shows to this Honorable Court that the said Leslie L. Conner is estopped to rely upon said letter or plead the same or receive any benefits by virtue thereof, and that the said Leslie L. Conner, in procuring the signature of the said A. J. Simler on said letter, acted fraudulently and in bad faith and was guilty of actual fraud under the circumstances hereinabove shown, and by virtue of such fraud, said letter is void and of no force and effect.

XVI.

That in addition to the above, this plaintiff shows to this Honorable Court that the circumstances as hereinabove pled, under which said letter was signed, also show that the defendant was guilty of constructive fraud in the preparation of said letter and securing the signature of the said A. J. Simler thereon and thereto without any advice whatever to the said plaintiff except the advice of Leslie L. Conner and Arnold B. Britton, and by virtue of all the above, the said letter is absolutely void and of no force and effect and the defendant is not entitled to any benefits by virtue thereof or to claim any benefits or interest of any kind by virtue of said letter of September 25, 1952.

XVII.

This plaintiff specifically denies the allegations in Paragraph 6 of the Cross Complaint and denies that the letter of September 25, 1952 was mutually agreed upon between [fol. 290] the parties, but alleges the true facts to be concerning said letter as hereinabove set out and alleges and shows that said letter of September 25, 1952 is void and of no force and effect.

XVIII.

This plaintiff admits that a suit was filed in the Supreme Court, as alleged in Paragraph 10 of the Counterclaim of Defendant and as reflected by Exhibit 13, and as heretofore pled, the plaintiff admits that the Supreme Court of the United States denied certiorari as shown by Exhibit 16, and that Exhibit 17 mentioned in Paragraph 13 of the Counterclaim, reflects the ruling of the Court in said cause. That a suit was filed as alleged in Paragraphs 15, 16, 17, 18 and 19, and that the exhibits attached to the Counterclaim reflecting said proceedings, are true and correct copies of what they purport.

XIX.

The plaintiff admits the proceedings mentioned in Paragraph 21 and that the case was appealed to the Supreme Court of the State of Oklahoma, and is cited in 308 Pac. 2d, Page 304, as shown by Exhibit 32, attached to the defendant's Counterclaim.

XX.

This plaintiff admits that proceedings were had as shown and pled in Paragraph 23 of the Counterclaim, as reflected by Exhibit 33 and Paragraph 24 of Exhibit 34, with reference to Paragraph 25 of the Counterclaim.

XXI.

This plaintiff, with reference to Paragraph 20 of the Counterclaim, denies that he was beset with legal disadvantages merely because the Sisters of St. Francis was a [fol. 291] Catholic religious society and operated a hospital in Oklahoma City, Oklahoma.

Wherefore, having fully answered herein and replied to the Counterclaim, this plaintiff prays that the prayer of the Counterclaim and the Counterclaim of the defendant, Leslie L. Conner, be denied and this Court fix a reasonable attorneys fee for the defendant herein and determine what is a reasonable fee under the circumstances and under the evidence, and that plaintiff have his costs herein ex-

pended, for such other relief as may appear proper, whether legal or equitable, general or specific, to which the evidence may show him entitled.

John B. Ogden, 1408-09 Liberty Bank Building, Oklahoma City, Oklahoma, Attorney for Plaintiff.

Certificate of Service (omitted in printing).

[fol. 366] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR WESTERN DISTRICT OF OKLAHOMA

Case No. 8008-Civil

[Title omitted]

ORDER STRIKING DESIGNATED PARAGRAPHS OF REPLY TO COUNTERCLAIM—June 19, 1959

On June 19, 1959, the Court after argument on June 11, 1959, enters the following Order.

It Is Ordered that the Oral Motion of Plaintiff to Suppress the Depositions of witnesses of Phillips Petroleum Company taken at Bartlesville, Oklahoma, on June 8, 1959, in this case is overruled.

It Is Further Ordered that Defendant's motion to strike from reply should be Overruled as to paragraphs 3, 4, 5, 6, 7, 8, 9, 11, 13, 14, 15 and 16 but should be Sustained as to paragraphs 10, 12, 17, 19, 20, 21, 22, 24, 25, 26, 29, 30, both paragraphs 31 of page 16, 32, 33, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54 and 55, and Plaintiff is directed to file an amended reply to defendant's counterclaim, which omits the paragraphs which have been stricken above.

W. R. Wallace, United States District Judge.

[fol. 516]

UNITED STATES DISTRICT COURT
FOR THE EASTERN, NORTHERN AND WESTERN
DISTRICTS OF OKLAHOMA

W. R. WALLACE
JUDGE

OKLAHOMA CITY 1

September 29, 1959

[Filed—Sep 30 1959—Ted J. Davis, Clerk, U. S. District Court By Josephine P. Gore, Deputy]

Mr. Ted Davis,
U. S. District Court Clerk,
Federal Building,
Oklahoma City, Oklahoma.

A. J. Simler vs. Leslie L. Conner.
No. 8008 Civil.

Dear Ted:

At the request of Mr. John B. Ogden, one of the attorneys for Mr. Simler, in the above styled case, I am assigning this case to the Honorable Stephen S. Chandler, Chief Judge of the Western District of Oklahoma, for trial and disposition.

Sincerely yours,

W. R. WALLACE

[fol. 538]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

Case No. 8008 Civil

[Title omitted]

MOTION FOR SUMMARY JUDGMENT—Filed November 23, 1959

Comes now the defendant and shows the Court that there is no genuine issue of any material fact in this case presented by the pleadings, or the depositions and admissions of both the plaintiff and the defendant:

—1—

That the action was brought by plaintiff, A. J. Simler, to have the Court determine the amount defendant, Leslie L. Conner, was entitled to as a "reasonable contingent attorney's fee" to be set by the Court for the legal services defendant performed and rendered as attorney for the plaintiff in cases resulting in the plaintiff obtaining oil runs and a valuable Caddo County Farm from the estate of his deceased sister, Birdine Fletcher, who had, previous to her death, willed him (her brother, A. J. Simler) "only $1.00, this amount and no more" from her valuable estate.

In the Complaint, plaintiff admits that he employed the defendant by written contract and that he employed him and agreed to pay him a "reasonable contingent attorney's fee" for the legal services which defendant was to [fol. 539] perform. Defendant in his Cross Complaint states that the reasonable attorney's fee was clarified by a letter of September 25, 1952, in which the parties agreed by letter that the "reasonable contingent attorney's fee" would be in the percentages, fixed at 25%, 33⅓%, or 50% of the recovery, if any, and if no recovery, defendant would not be paid an attorney's fee. Plaintiff by reply to the Counterclaim states by bare allegations that the clarification contract of September 25, 1952, before anything was won, was obtained by actual and constructive fraud.

—2—

That defendant, Leslie L. Conner, hereby moves the Court to enter Sammary Judgment for the defendant, in accordance with the provision of Rule 56 (b) and (c) of the Rules of Civil Procedure, on the grounds and for the reasons that the Answer, Counterclaim, and Cross Complaint and the depositions are Pre-Trial Admissions herein filed show that the defendant is entitled to judgment as a matter of law for a reasonable attorney's fee for the legal services performed by the defendant for and on behalf of the plaintiff, as contained in the contingent attorney's fee contract signed by plaintiff, dated July 18, 1952, and clarification contract defining "reasonable fee" of September 25, 1952, and as prayed in the Complaint and the Answer and

Counterclaim and Cross Complaint; that both plaintiff and defendant request the same relief in this action, and that in determination of the matter, it is a matter of law for the Court to determine.

[fol. 540]

—3—

That a reasonable contingent attorney's fee for obtaining real property, money, and monthly income therefrom in the cases filed, won, appealed, and obtaining the farm and oil runs for plaintiff through the County Court of Oklahoma County is as set forth in the contingent fee clarification contract of September 25, 1952, signed by plaintiff at 50% because all the cases were appealed to the Supreme Court.

—4—

That the only question of fact raised by the pleadings in this case is the bare allegation that the interpretative contract of September 25, 1952, stating what these parties intended by the use of the words "reasonable attorney's fee" in the first contract, was obtained by fraud. The allegations of fraud are merely a sham and conclusion of plaintiff's attorney to put the case at issue and as shown by the deposition of A. J. Simler and the affidavit and deposition of Leslie L. Conner, there is no genuine factual issue as to any material fact.

—5—

Defendant moves the Court to enter a Summary Judgment for the defendant as prayed in his Counterclaim and Cross Complaint and that the contingent reasonable attorney's fee due Leslie L. Conner be fixed at 50% of the amount of the recovery.

Robert O. Bailey, Attorney for Defendant.

[fol. 541] Certificate of Service (omitted in printing).

[fol. 542]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

A. J. SIMLER, Plaintiff,

vs.

LESLIE L. CONNER, PHILLIPS PETROLEUM COMPANY, a corporation, Defendants.

Case No. 8008.

BRIEF IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT—Filed November 23, 1959

The pleadings, depositions, and file shows that plaintiff sued defendant to have this court determine what amount plaintiff owed defendant as a reasonable contingent attorney's fee for legal services rendered by defendant for plaintiff from July 18, 1952, to June, 1958. Plaintiff employed defendant on written contract agreeing to pay a reasonable fee to be set by the court which was dated July 18, 1952. (See Exhibit 1 of Affidavit.)

Thereafter, because of the proposed Federal Court litigation, plaintiff and defendant agreed that a reasonable contingent attorney's fee would be on a sliding percentage scale of 25% or 33⅓ or 50% if the case went to the Supreme Court.

Plaintiff had been left $1.00 as his part of his sister's estate, which she had inherited from her husband. He wanted more. Defendant in 6 years and 19 lawsuits, 3 of which were in the Supreme Court of the United States and 3 in the Supreme Court of Oklahoma, won a farm and fortune for plaintiff estimated at $400,000.00.

[fol. 543] Plaintiff wants the court to set amount of defendant's "reasonable attorney's fee."

Defendant Counterclaimed and Cross Petitioned asking the court to set the "reasonable contingent attorney's fee" as stated in the letter of September 25, 1952.

Subdivisions (a) and (b) of Rule 56 authorize motions for summary judgment by a party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment and by a party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought. Thus, unlike the procedure in many states, a summary judgment under this rule is available both to plaintiffs and defendants in all forms and kinds of civil actions to which these rules apply. (See Engl. v. Aetna Life Ins. Co., CA (2d) 1943, 139 F.2d 469)

Rule 56(c) fixes the standard by which to determine whether a summary judgment should be granted. It provides that the "judgment sought shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (See Raylite Elec. Corp. v. Noma Elec. Corp., C.A.2d, 1948, 170 F.2d 914) and (SMS Mfg. Co. v. U. S. Mengel Plywoods, C.A. 10th, 1955, 219 F.2d 606.)

It is perfectly clear on principle that pleading allegations do not create an issue as against a motion for summary judgment supported with affidavits. The very object of the summary judgment procedure, as Cardozo said long [fol. 544] ago, is "to separate what is formal or pretended in denial or averment from what is genuine and substantial, so that only the latter may subject a suitor to the burden of a trial." The rule was intended to permit a party to pierce the allegations of fact in his opponents pleadings. (See Engl. v. Credit Suisse, 1926, 152 N.E. 110, 111, 242 N.Y. 346, 350.)

Very Respectfully Submitted,

Robert O. Bailey, Attorney for Defendant.

[fol. 545]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

Case No. 8008–Civil

[Title omitted]

AFFIDAVIT IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT —Filed November 23, 1959

State of Oklahoma,
Oklahoma County, ss.:

Leslie L. Conner, being first duly sworn on oath, deposes and states:

—1—

I am Leslie L. Conner. I am a lawyer and a member of the Bar of the Supreme Court of the State of Oklahoma; all the Federal District Courts in Oklahoma; the Court of Appeals of the Eighth, Fifth, and Tenth Circuits; and the United States Court of Claims; and the Supreme Court of the United States. I have been engaged in the general practice of law in Oklahoma City, Oklahoma, since June 19, 1925. I am a graduate of the law school of the University of Oklahoma; and my law offices have been in the Hightower Building for the past 27 years. I, as defendant herein, have personal knowledge of the facts herein set forth. This Affidavit is submitted in support of the defendant's motion for Summary Judgment herein for "a reasonable contingent attorney's fee" for legal services performed by defendant as attorney for and on behalf of the plaintiff, A. J. Simler, and for the purpose of showing that there is in this action [fol. 546] no genuine factual issues as to any material fact and the defendant is entitled to Summary Judgment against plaintiff as a matter of law.

—2—

I, Leslie L. Conner, was employed by plaintiff, A. J. Simler, as his lawyer to represent Simler on a written con-

tingent fee agreement (Exhibit 1 & 2). The legal services were rendered by me over a period of 5½ years in 19 cases, three in the Supreme Court of Oklahoma, three in the Supreme Court of the United States, and several in the State District Court and Federal District Court and in the Court of Appeals.

On July 18, 1952, Mr. Simler employed me on a reasonable contingent attorney's fee (copy of written contract attached as Exhibit 1) basis to try to recover a valuable oil producing farm belonging to the Estate of Birdine Fletcher. Mr. Simler was her sole heir at law and by the terms of her will he was left the sum of $1.00. The farm was devised to the Sisters of St. Francis, a Missouri corporation, by the terms of the Will.

I began investigation in preparation to contest the admission of the Will of Birdine Fletcher to probate in the County Court. On July 30, 1952, Mr. Simler directed the filing of the contest (See Exhibit 3). During the two months after my employment by Mr. Simler, it became apparent that I could not handle this litigation alone, and it would be necessary to employ other attorneys to assist me in the case. It was also determined that a declaratory action in the Federal Court was possible to determine the right of the Sisters of St. Francis, a Missouri corporation, to hold real estate outside a city or town not used in the business. [fol. 547] It was my opinion that the Will prepared for Birdine Fletcher, was not valid and it was my opinion that if we could judicially determine that the Sisters could not take the land then the devise by Will to the Sisters of St. Francis would fail and the farm would pass to Mr. Simler, he being the sole heir at law of Birdine Fletcher.

In September, 1952, I advised Mr. Simler of my investigation, findings, the proposed Federal Court action, and the necessity of other lawyers to assist me. I advised him that the other attorneys employed would be paid from my contingent fee contract. I proposed to Mr. Simler that we clarify the July 18 contract by agreeing on what a "reasonable fee" would be. Mr. Simler agreed that a graduated scale of 25%, 33⅓, or 50% would be reasonable and Simler signed the contract September 25, 1952, attached as Exhibit 2. Mr. Simler left my office satisfied with the agreement.

I employed James Grigsby and later Phil Daugherty to assist me, to be paid out of my contingent attorneys' fee. On October 14, 1952, Mr. Simler directed the filing of the Federal Court litigation (see Exhibit 4).

The Courts upheld the factum of the Will but I established by the Federal Court litigation that the Sisters of St. Francis could not hold real estate in Oklahoma outside a city or town not used in the business. (Summary of work done attached as Exhibit 5.)

The Declaratory Judgment action in the Federal Court broke the will, the devise of the farm to the Sisters of St. Francis failed and in May 1955, the County Court decreed A. J. Simler to be the owner of the oil runs and the farm.

[fol. 548] Mr. Simler knew all the facts, conferred almost daily with us and was satisfied with the contingent fee of 25%, 33⅓, and 50% and it was 2½ years later, and after the Federal Court action was won, that he evidenced a dissatisfaction with the graduated scale contract of September 25, 1952. (Exhibit 2).

The plaintiff has been decreed in the Estate of Birdine Fletcher, deceased, by the County Court of Oklahoma to be the owner of the following described real estate:

"Northwest Quarter (NW¼) of Section 34 Township 6 North Range 10 West, in Caddo County, Oklahoma."

which has 16 producing oil wells operated by Phillips Petroleum Company in the Medrano Sand Unit and is now producing approximately $3,300.00 per month for the Fletcher Farm, now owned by Simler. There is being held in suspense account by Phillips Petroleum Company the sum of over $90,000.00. Out of a $65,000.00 payout in May 1957, the plaintiff and defendant first paid the real estate mortgage from said funds which Simler put on the farm of $12,800.00 (Which he used to satisfy the suit filed by James E. Grigsby.) and then plaintiff paid defendant $24,000.00 on his fee. At this time, plaintiff signed (Exhibit 6 attached hereto) and recognized defendant's interest in the farm and runs and agreed not to sell, transfer, or encumber the farm until the attorney's fee was paid and settled. Plaintiff also

agreed in writing to pay defendant $1,500.00 a month for (See Exhibit 35 attached to Cross Complaint) 12 months or an additional $18,000.00, none of which he has paid (Which agreements and settlement was handled by John Ogden, his present attorney.)

Although, since then, plaintiff, A. J. Simler, (Without defendant's knowledge or consent and using his present [fol. 549] attorney) has received approximately $29,111.53 additional from refunds and other sources from said farm and estate.

Receipt signed by A. J. Simler, October 2, 1957 (Exhibit 8)	$16,679.31
Receipt signed by A. J. Simler, March 26, 1958 (Exhibit 9)	$11,132.22
Agriculture rent on 160 acre farm for 1958-1959 (Estimated)	$ 1,300.00

Simler has not notified defendant of these payments nor paid anything to defendant from them. The real estate is located within the jurisdiction of this Court described in both the Complaint and Answer and Counterclaim. The parties agreed in the employment contract of July 18, 1952, that the fee could be set by the Court. That the fixing of a contingent attorney's fee is a matter of law for the Court and not for the jury. (In C.R.I.& P. Railroad Co. vs. Rittenhouse, et. al., 285 P. (2) 186) (Jones vs. Farmers Insurance Exchange of Los Angeles, California, 112 F. Supp. 952.) (Wallace).

—4—

That the depositions taken pursuant to Rule 26 of both plaintiff and defendant are filed herein showing that the plaintiff, A. J. Simler, employer by the defendant, Leslie L. Conner, as his attorney to represent him and to render the legal services and all the services were rendered for A. J. Simler and that he has accepted the title to the farm and all the benefits therefrom. Plaintiff admits he employed defendant as his attorney and signed the contingent fee contract letter of July 18, 1952. (Page 8 of his deposition)

and signed the clarification contract of September 25, 1952, [fol. 550] (Page 19 of his deposition) and the letter of July 30, 1952, (Page 17 of his deposition) and the direction to start Federal Federal Court litigation October 14, 1952, (Page 39 of his deposition) and at page 65 A. J. Simler, testified:

> Q. All right, are you willing to pay a reasonable fee?
> A. Yes sir, I always have been.

Pre-Trial Admissions

At the three pre-trials held in this case before Honorable W. R. Wallace, United States District Judge, to whom the case was assigned in April, 1958, and who held pre-trials thereon on March 23, 1959, June 11, 1959, and September 11, 1959, John Ogden, counsel for plaintiff, Simler, stated that he and his client, Simler, wanted defendant, Conner, to be paid a "reasonable attorney's fee."

Excerpt from transcript of the 64 page pre-trial of June 11, 1959, at Page 8, Counsel John Ogden admitted for the plaintiff:

> "In addition to that, if the Court please, Mr. Conner is entitled to a reasonable fee, and that's what we want him to have; but he is not entitled to more than a reasonable fee."

Excerpt of the 143 page pre-trial of September 11, 1959, Counsel John Ogden admitted for the plaintiff at Page 21:

> "Mr. Ogden: It is a contingent fee. The contract so states, your Honor, please. And I want to say this to you, if your Honor please, and hope counsel will listen to it: We don't want to beat Mr. Conner out of one dime, not one penny. We want him to have everything he is entitled to. We just want him to have a reasonable fee, and whatever that is."

[fol. 551] And at Page 27:

> "The Court: I think that if this man was willed a dollar, and these boys, this attorney picked up for him an

estate that is worth quite a lot of money, that it seems to me that you can't even begin to argue that he is not entitled to an attorney fee."

And at Pages 27 and 28 Counsel admitted:

"Mr. Ogden: Judge, I don't, I never have, I didn't mean to and I am sorry to impress you that way. I say he is entitled to an attorney's fee, but a reasonable attorney's fee for his service for winning that property. There is not any question but what he is entitled to it."

From the pleadings, depositions, pre-trial admissions there is no material question of fact and plaintiff and defendant ask the same relief—a reasonable attorney's fee for the legal services rendered, work performed, recovery made, all on a contingent fee contract. Defendant by Counterclaim says same should be 50% of the recovery.

Leslie L. Conner

Subscribed and sworn to before me the 23 day of November, 1959.

J. Monroe Little, Notary Public.

My commission expires: June 4, 1962

[fol. 571] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

No. 8008—Civil

[Title omitted]

AFFIDAVIT—Filed December 4, 1959

[fol. 572]

State of Oklahoma)
) ss
Oklahoma County)

Arnold Britton, of lawful age, being first duly sworn on his oath, states:

My name is Arnold B. Britton. I am an Attorney and Counselor at Law. I was admitted to the Bar of the State of Oklahoma on the 6th day of February, 1945, and have since that time been engaged in the practice of law in Oklahoma City. I am licensed to practice in the State and Federal Courts. I was associated with Leslie L. Conner in the practice of law from 1948 to March 1, 1956. I am acquainted with A. J. Simler. I met him some time in June of 1952. I was present with Mr. Leslie L. Conner on July 18, 1952, when Mr. Simler signed the contract employing Leslie L. Conner, of Conner, Hilpirt, and Britton. I know all the facts and circumstances surrounding that employment and the letter of September 25, 1952, and my deposition was taken by John Ogden in Case No. 7225-Civil, United States District Court for the Western District of Oklahoma on July 26, 1957, the attorney for A. J. Simler, defendant in that case.

I was present on July 18, 1952, with Leslie L. Conner when the letter contract was signed by A. J. Simler and I was also present in September, 1952, with Leslie L. Conner when the explanatory letter was signed by Mr. A. J. Simler.

Mr. Leslie L. Conner, Mr. A. J. Simler, and I were the only three persons present when these employment letters were signed. Both times there was a full discussion between Simler, Conner, and myself and in the September letter we

both explained to Simler that it was to the mutual advantage of all parties to agree on the term "reasonable attorney fee" on a contingent basis referred to in the July [fol. 573] 18, 1952 employment contract. There was no undue influence, overreaching nor information withheld nor representations made as to amount of recovery, if any, nor any other persuasion used to get Mr. Simler to sign these letters. He signed after being fully informed. He knew what he was doing and was very happy and satisfied when he left the office and everything was fine with him until 2½ years later, the recovery of the farm was made, and then he said that he did not want to be bound by the 50% contract.

Arnold B. Britton

Subscribed and sworn to before me this 3rd day of December, 1959.

Joe M. T. Wilson, Notary Public.

(Seal)

My commission expires: March 11, 1962

[fol. 577] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

No. 8008

[Title omitted]

PLAINTIFF'S REQUEST FOR REVIEW OF RULINGS OF JUDGE W. R. WALLACE ON PLEADINGS AND PROOF—Filed December 8, 1959

Comes now the plaintiff and shows to this Honorable Court that heretofore this cause was originally presented to the Honorable W. R. Wallace, United States District Judge for the Northern, Western and Eastern Districts of the State of Oklahoma, and that said judge ruled upon a motion filed by the plaintiff and motions filed by the defendant and made certain rulings on a pre-trial conference or on several pre-trial conferences, all as more fully is reflected by the records, pleadings and files herein which are made a part of this motion by reference only.

This plaintiff shows to this Honorable Court that he believes that there was error in such rulings and that the rulings should be reviewed by this court and such errors corrected and the pleadings settled or determined by this Court, since this cause will be tried by this Court, and that this plaintiff feels that he should call to this Court's attention such rulings in order that the same may be corrected prior to the trial of this cause.

Wherefore, this plaintiff most respectfully requests this Honorable Court to review the rulings and orders of the Honorable W. R. Wallace, and to permit this plaintiff to re-present to this Court his contentions, pleadings and objections to the ruling of the Honorable W. R. Wallace on [fol. 578] the pre-trial conferences and on the pleadings, all as reflected by the records herein.

Respectfully submitted,

Jack M. Highley, Mutual Savings Building, Oklahoma City, Oklahoma and John B. Ogden, 1408-9 Liberty Bank Building, Oklahoma City, Oklahoma, Attorneys for Plaintiff.

Certificate of Delivery (omitted in printing).

[fol. 580] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

No. 8008

[Title omitted]

RESPONSE TO MOTION OF DEFENDANT FOR SUMMARY JUDGMENT AND COUNTER AFFIDAVIT OF THE PLAINTIFF, A. J. SIMLER—Filed December 8, 1959

Comes now the plaintiff in this cause, A. J. Simler, and for his response to the defendant's Motion for Summary Judgment and for Counter Affidavit of plaintiff herein, shows to this Honorable Court, as follows:

1. That this plaintiff denies generally and specifically each, every and all the allegations contained in said Mo-

tion for Summary Judgment, except such as are hereinafter specifically admitted.

2. That the plaintiff herein filed this action for declaratory judgment asking this Court to determine with the aid of a jury what was or is a reasonable fee for the defendant in representing him in a certain action or actions with reference to the estate of his deceased sister, Birdine Fletcher.

3. This plaintiff shows to this Honorable Court that on the 18th day of July, 1952, as alleged in the Complaint, he signed a letter of employment which was prepared by the defendant herein, wherein he agreed to pay the defendant a reasonable attorneys fee for his services as attorney.

4. This plaintiff now shows to this Honorable Court [fol. 581] that at that time, the said Leslie L. Conner became the attorney for this plaintiff and the relationship of attorney and client then and there existed from and after said date.

5. This plaintiff shows to this Honorable Court that thereafter, the said defendant did begin representing the said plaintiff herein as his attorney. This plaintiff shows that after said time and on the 25th day of September, 1952, the defendant called the plaintiff to his law office in Oklahoma City, and after much persuasion and over the protests of the said plaintiff, the plaintiff signed a letter referred to in the Motion for Summary Judgment as "Exhibit H" and this plaintiff now shows that the said letter was not signed by the said defendant, but was prepared by the defendant and that the same did not constitute a contract for the reason that there was no consideration therefor; for the further reason that there was never a meeting of the minds thereon and for the further reason that the said defendant herein, by coercion, false statements and fraud, procured the signature of this plaintiff to said letter dated September 25, 1952 and which letter was prepared by the said Leslie L. Conner and the date was not written into said letter at the time for the reason that the said defendant prepared same at a time unknown to the plaintiff and left the day of the month blank and wrote same in with a pen after said plaintiff appeared in the office.

6. This plaintiff further shows that there is a genuine issue of facts to be presented to the jury in this case.

7. This plaintiff shows that he agreed to pay to the [fol. 582] defendant a reasonable attorneys fee, but did not agree to pay the said defendant a percentage of any amount recovered and that the percentages mentioned in the second letter, that is the letter of September 25, 1952, was prepared, written and presented to this plaintiff on the 25th day of September, 1952, and that the said plaintiff was persuaded by the said defendant to sign said letter at such time, and the said plaintiff had no independent advice from anyone and was not permitted to talk with anyone with reference to said letter, and that at that time, there was no discussion of any kind with reference to anything concerning said estate except the probate of the will, and no case was mentioned with reference to a declaratory judgment or the right of the Sisters of St. Francis to take under the laws of the State of Oklahoma.

8. This plaintiff shows to this Honorable Court that the defendant is entitled to a reasonable attorneys fee if he has not already been paid same; that this plaintiff has paid to the said defendant the sum of $24,000.00 in cash, and that this plaintiff does not know whether said sum is or is not a reasonable attorneys fee for the services rendered, and in addition to the above, this plaintiff shows that one James E. Grigsby was assigned 28% of the attorneys fees which the said Leslie L. Conner was entitled to, and that this plaintiff was sued by the said James E. Grigsby in the United States District Court for the Western District of the State of Oklahoma for attorneys fees, and this plaintiff was forced to employ another attorney to represent him in said cause; and that said cause was compromised [fol. 583] with the said James E. Grigsby and this plaintiff paid to the said James E. Grigsby, $12,800.00, and took assignment from the said James E. Grigsby of his 28% of the attorneys fees which was due or would be due to the said defendant herein, Leslie L. Conner.

9. This plaintiff, in addition thereto, paid to John B. Ogden, $7,500.00 attorneys fees for his services in assisting the said Leslie L. Conner in litigation concerning said

estate in the District Court of Oklahoma County, Oklahoma, and the Supreme Court of Oklahoma, and in defending the said suits by the said James E. Grigsby, and also in defending his suit in the United States District Court for the Western District of Oklahoma, styled "Arnold B. Britton vs. A. J. Simler", wherein the said Arnold B. Britton sued the said A. J. Simler for attorneys fees and in representing the said A. J. Simler, herein.

10. This plaintiff shows to this Honorable Court, in addition to the above, that this plaintiff was forced to and did pay the attorneys fees for the opposing counsel in said litigation in the County Court, Oklahoma District Courts, the Supreme Court of Oklahoma, the United States District Court in Oklahoma, the United States Court of Appeals for the Tenth Circuit, and the Supreme Court of the United States, the amount of which has heretofore been plead and presented herein.

11. This plaintiff further shows to this Honorable Court that in addition to the payments of all the above sums, he has paid all the costs with reference to said litigation or incurred in connection therewith, and has paid personal expenses, such as hotel bills, traveling expenses and other expenses of the said Leslie L. Conner and the attorneys [fol. 584] associated with the said Leslie L. Conner in the handling of said litigation.

12. This plaintiff further shows to this Honorable Court that "Exhibit 7" attached to the Motion of Defendant for Summary Judgment in this cause does not in any wise admit nor was it intended to admit that the defendant has any interest whatever in the property of this plaintiff.

13. This plaintiff shows to this Honorable Court that the said Leslie L. Conner and this plaintiff, together with Phil E. Daugherty and John B. Ogden, attorneys, met in the office of John B. Ogden and it was specifically and orally agreed that said agreement dated May 22, 1957 would not be used in any wise in any court for or against any party and it would be executed without any prejudice to the rights of any parties either Leslie L. Conner or A. J. Simler, and in connection therewith, this plaintiff shows that the said Leslie L. Conner breached said agreement and has

attempted to attached said instruments to the pleadings in this cause and that said instruments provide in part, as follows:

> "Now therefore, without prejudice to the claims, contentions or agreement of either Leslie L. Conner or A. J. Simler with reference to said attorneys fees, it is agreed as follows:
>
> First. That this instrument and agreement shall in no wise be considered by any of the parties hereto as a construction of the agreement with reference to attorney fees between Leslie L. Conner and A. J. Simler, *and this agreement shall not be offered as evidence in any court by either of the parties hereto or any other persons, or the heirs, executors, assigns or administrators of any* of the parties hereto. It is understood between the parties that this agreement simply is made so that the money now on hand and to be distributed can be used in part and as hereinafter set out by the parties hereto. * * * "It is agreed between the parties hereto that all sums paid to Leslie L. Conner whether out of the oil runs or out of the money to be distributed [fol. 585] shall be credited on any fee eventually arrived at or agreed to between the parties or determined by any court."

14. This plaintiff shows that, nevertheless, the said Leslie L. Conner, having agreed in writing and orally that the said instruments would not be used against either of the parties, and it was executed without prejudice to the rights of any of the parties, has nevertheless attempted to and is now attempting to take advantage of this plaintiff by attempting to use said instrument herein and otherwise to gain an undue advantage over this plaintiff.

15. This plaintiff shows that therefore, he is entitled to have a jury determine the controverted issues of fact in this cause as to what is a reasonable attorneys fee for the services rendered herein, and that he has demanded a jury in this cause to determine said question and now and hereby demands a jury trial to determine said question of fact as to what is a reasonable attorneys fee for the services rendered herein.

16. This plaintiff shows to this Honorable Court that at the time the Estate of Birdine Fletcher, deceased, was appraised, the defendant in this cause was attorney for this plaintiff and that said estate was appraised at that time at $176,000.00, that is, the farm lands of this plaintiff was appraised at approximately $176,000.00, and that the said attorney, Leslie L. Conner, acquiesced in said appraisal or at least did nothing to change same or cause same to be changed, and that in consideration of the amount of money the defendant would be entitled to or was entitled to as attorney fees, the value of the property should be considered, [fol. 586] but that the value of the property should be fixed at the time the United States Court of Appeals, Tenth Circuit, held that the property was the property of this plaintiff and had been since the death of his sister, Birdine Fletcher, deceased.

17. This plaintiff shows to this Honorable Court that he has only what would be termed an 8th Grade Education; that he had never studied law or been versed in the law or the fixing of attorneys fees and that the second letter, that is the letter dated September 25, 1952, was not his conception or idea or thought as to what a reasonable attorneys fee is or was, and that he had no way of knowing what a reasonable fee was and that he was old, unversed, and worried, and that at that time he had faith and confidence in the defendant as his attorney and that said attorney told him that he was going to win the entire estate, including the money on hand, bonds, residence in Oklahoma City, debts owing the estate, and all matters in said estate and that he would cause the will to be broken, leaving the entire estate to this plaintiff; and that he wrote a will at the same time in which the said Leslie L. Conner named himself as the attorney for the Executor in case of the death of said A. J. Simler, and kept said will in his office; that is, the possession of the defendant; and plaintiff shows that said defendant mis-represented the facts to this plaintiff and induced him to sign said letter without any consideration therefor whatsoever.

18. This plaintiff shows that what the property has produced since said time is not proper for consideration in

this cause and that the defendant herein is only entitled [fol. 587] to a reasonable attorneys fee fixed in dollars and cents considering the value of the property at the time the same was recovered.

19. This plaintiff shows to this Honorable Court that the depositions on file in this cause, together with the pleadings herein; together with this affidavit show that there is a genuine issue of fact to be determined by a jury herein.

20. This plaintiff further shows to the Court that at the time Exhibit 7 was executed and by the terms thereof, this plaintiff agreed to pay out of the oil runs to the defendant $1500.00 per month until a certain lawsuit styled "Britton vs. Simler" was settled, but in any event, not to exceed one year from the date thereof and in connection therewith, this plaintiff states that he received no money from the said Phillips Petroleum Company for oil runs on account of the litigation and threatened litigation over attorneys fees and has not received any oil runs up to this time and that the said defendant knew of such fact at the time he made the affidavit in support of his Motion for Summary Judgment.

21. This plaintiff further shows that the rebate of refunds on estate taxes were supposed to be paid to him and that in the County Court the order provided that certain sums be withheld until all tax matters were settled with reference to said estate and that this plaintiff employ a tax firm to assist and check on the estate taxes and paid the sum of $2500.00 to said firm, and the Court decreed that whatever taxes or refunds were to be refunded to the plaintiff [fol. 588] herein, and that he was entitled under said order to said refunds mentioned by the defendant.

Wherefore; the plaintiff prays that the Motion for Summary Judgment be denied.

Jack M. Highley and John B. Ogden, Attorneys for Plaintiff.

Duly sworn to by A. J. Simler, jurat omitted in printing.

[fol. 596]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

No. 8808—Civil

A. J. SIMLER, Plaintiff,

vs.

LESLIE L. CONNER, Defendant.

Reporter's Transcript of Proceedings—December 11, 1959

Before: The Honorable Stephen S. Chandler, Chief Judge of the United States District Court for the Western District of Oklahoma.

APPEARANCES:

For the Plaintiff:

Mr. John B. Ogden, Attorney-at-Law, Liberty Bank Building, Oklahoma City, Oklahoma.
Mr. Jack M. Highley, Attorney-at-Law, Mutual Savings Building, Oklahoma City, Oklahoma.

For the Defendant:

Mr. Robert O. Bailey, Attorney-at-Law, Hightower Building, Oklahoma City, Oklahoma.
Mr. James M. Little, Attorney-at-Law, Hightower Building, Oklahoma City, Oklahoma.
Mr. Phil E. Daugherty, Attorney-at-Law, Fidelity Building, Oklahoma City, Oklahoma.

[fol. 656] Mr. Ogden: Credit, yes, as a matter of law. I want to say this now, and I am doing this, and I don't think it is necessary, but we want to now again advise the Court that we do not agree to try this case without a jury. We request a jury and we have requested it in every pleading we have filed. I believe, and we do not agree that the records as they now stand would give the Court a full

picture of the case; that testimony would have to be presented to the Court in order for the Court to be able to properly rule upon the case.

The Court: What additional testimony? I don't want to know what it is, but on what point would you offer additional testimony?

Mr. Ogden: Well, if Your Honor please, of course, we would naturally offer evidence to show what a reasonable fee was in a case of this kind.

The Court: Of course.

Mr. Ogden: That is one thing we would naturally do, because we think that would be proper. And then next, if Your Honor please, Mr. Simler has testified, he doesn't desire to change his testimony, but we do desire to corroborate it with other testimony which we think we have *at the time.*

The Court: How could there be any other testimony on [fol. 657] that point?

Mr. Ogden: Well, Mr. Conner and Mr. Simler are in complete disagreement in this on what took place.

The Court: There are only the two of them who were there.

Mr. Ogden: Well, if Your Honor please, I'm not saying—well, there was other people there, though, Judge.

The Court: Whose testimony are you going to rely on to add to it?

Mr. Ogden: Well, I think I'm going to rely on Mr. Arnold Britton. Mr. Arnold Britton sued Mr. Simler for attorney's fee.

The Court: You are going to use Mr. Britton now? What are you going to prove by him?

Mr. Ogden: Judge, I've got his deposition and as I recall it, he testifies in that deposition, I don't attempt to remember it in detail, but as I recall it, he testifies that it was after this county court case which was October the 2d, that Mr. Grigsby got up the idea to file this case in the Federal Court, that Mr. Conner had nothing to do with it, hadn't even thought about it, knew nothing about it; that Mr. Grigsby filed it and Mr. Grigsby went to Denver and argued it at the Bar.

The Court: Are you willing for that to be a part of the record?

[fol. 658] Mr. Bailey: We are willing to stipulate that that deposition be filed in this case. His affidavit as to his testimony is also on file.

Mr. Ogden: He was suing Mr. Simler at that time. We want to use him as a witness in this case if we try the case, because we feel like it would be important to do it.

The Court: What about his deposition there, why don't we let his deposition come in?

Mr. Ogden: But he was our adversary when we took his deposition.

Mr. Bailey: It won't change the truth.

Mr. Ogden: We are—he's bound but we don't want to be; he was our adversary.

The Court: If you want to use him as a witness, surely you want to be bound by him.

Mr. Ogden: Not all of it, Judge.

The Court: Just part of it?

Mr. Ogden: If somebody sues you and you have their testimony, you don't want all of it in another case.

The Court: Just use the part that is relevant to the execution of this letter.

Mr. Ogden: May I just say this to the Court, the Court said, "What other witnesses do you have?" And I just mentioned one there.

The Court: All right, what about that? They will let [fol. 659] that in if you will get that deposition up here and only that will go in that is in there with reference to the letter of September 25th, if there is any evidence in there pertinent to the letter of September 25th that may be used. Then you've got it in the record and any other evidence cannot be considered.

Mr. Ogden: I might want to use him for a witness, Judge, too.

The Court: What are you going to prove by him, in addition to that, something different or something more?

Mr. Ogden: Something more.

The Court: Let's see what it would be.

Mr. Ogden: Well, I'll have to get him and talk to him, Judge, and get him up here. I didn't come up here for the purpose of trial.

The Court: I thought you came up here for pretrial and at pretrial you tell what every witness is going to testify to.

Mr. Ogden: I can assume what he is going to testify, some of it. I know what he has testified to in the deposition, but there is some other question.

The Court: What other questions do you want to go into?

Mr. Ogden: You are carrying me a little bit too fast, but I've got it all written down. Look here, Judge, just a [fol. 660] second. I wish you could see what I've got down here, and I wish you would see in this case, here is my file, here, here, and there and over there (indicating). I can't remember, it is just too much.

The Court: Mr. Simler has testified and you want to change his testimony by getting somebody else to change it.

Mr. Ogden: No, I won't change anybody's testimony, Judge, I don't do that.

The Court: Do you want to prove something different from what Mr. Simler has testified to?

Mr. Ogden: I just want to prove what the facts are.

The Court: Do you want to prove something different?

Mr. Ogden: Mr. Britton was associated with Mr. Conner, Judge, in his law firm, and he sued Mr. Simler for a lawyer fee. Mr. Daugherty is the only man that hasn't sued.

The Court: Do you want to use him to substantiate what Mr. Simler has testified to?

Mr. Ogden: And add some to it.

The Court: Add some to it?

Mr. Ogden: That happened when Mr. Simler wasn't there.

[fol. 661] The Court: What did you say the nature of that is?

Mr. Ogden: Judge, I recall I read his deposition the other night at home again to refresh my memory, and I didn't make notes on it, because I didn't anticipate this and I can't tell you the details of it. But, it seems to me from his deposition that it contradicted the testimony to some extent—to a great extent of Mr. Conner.

The Court: If it does, you can put it right in here, just file that deposition. In the meantime, I am going over everything in the record, and if you want to file that, or if you want to take another deposition, you can bring him up here and have him testify before me.

I want to consider all the facts in this case in considering his motion for summary judgment. So if you have other evidence you want to offer, I want to consider all that. I am ready to sustain his motion now just as a matter of law, but I want to go behind that and see what I would do if the second letter didn't exist.

. . . . . .

[fol. 858]

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

No. 8008

A. J. SIMLER, Plaintiff,

vs.

LESLIE L. CONNER, Defendant.

Deposition of the Plaintiff, A. J. Simler, Taken in His Own Behalf

APPEARANCES:

Hon. John B. Ogden, 1408-09 Liberty Bank Building, Oklahoma City, Oklahoma, Attorney for Plaintiff.

Messrs. Bailey, McClelland & Collins, 200 Hightower Building, Oklahoma City, Oklahoma, and Hon. James M. Little, 630 Hightower Building, Oklahoma City, Oklahoma, Attorneys for Defendant, by Hon. Robert O. Bailey and Hon. James M. Little.

The deposition of the plaintiff, A. J. Simler, in the above entitled and numbered cause, was taken before me, Scrivner

Mizell, Notary Public, in and for Pulaski County, Arkansas, in Room 908 Pyramid Life Building, in the city of Little Rock, State of Arkansas, beginning at the hour of 10:30 o'clock, a.m., on Monday, the 6th day of July, 1959, in his own behalf, in the above styled cause to be read in evidence in said cause now pending in the United States District Court, Western District of Oklahoma, wherein A. J. Simler is plaintiff and Leslie L. Conner is defendant.

[fol. 870] By Mr. Ogden:

Q. Now, Mr. Simler, I would like to ask you then after [fol. 871] you signed this letter on the 18th day of July, 1952, did you then and I believe you have said, it is repetition, you went to his office and he became your lawyer. Did you have any other conference with him from that time up to September 25th? Did you have conferences with him?

A. Oh, yes.

Q. What was your relationship with him?

A. Oh, yes, several times, yes.

Q. All right, sir. And he represented you during that period of time?

A. Yes, sir.

Q. And was your lawyer?

A. That is right.

Q. Mr. Simler, would you tell the court and jury what, if anything, has been your experience or knowledge in connection with lawyer fees or fixing of lawyer fees? Do you—what has been your experience with that prior to this time before you got in this litigation?

A. Why, I haven't had any.

Q. All right, sir. Then, did you know when you employed Mr. Conner what a reasonable fee was or wasn't a reasonable fee? You put in there a reasonable fee to be fixed by the court?

A. No, but I trusted in the clause in there that we would, if we couldn't agree on a reasonable fee, it should be left up to the county court.

Q. The Court?

[fol. 872] A. Or any other court.

Q. All right, sir.

A. So I figured that that way I would be—have a certain amount of protection.

Q. Now, I go to Exhibit No. 5.

A. Excuse me.

Q. Yes, sir.

A. But I will say that that wasn't my idea. That was Mr. Conner's idea.

Q. To write that letter?

A. To write that protection.

Q. Yes, sir.

A. In there.

Q. All right.

A. If we couldn't agree as to a reasonable fee, I had nothing to do with—about that except to sign it.

Q. He prepared the letter?

A. He prepared the letter.

Q. And you signed it? I will ask you what, if anything, Mr. Conner said to you about this clause that if you couldn't agree as to what a reasonable fee was the court would set it? What did he say about that, why he put that in, for whose protection or what did he say, if anything, just leave it.

A. I don't remember that he said anything, but I thought it was a pretty good idea.

Q. Yes, sir. Did you and he discuss it?

A. I might have. I might have read it over and said that, [fol. 873] that's—that suits me pretty well or something to that effect.

. . . . . .

[fol. 879] Q. All right, sir. Now, will you tell the court why or at whose suggestion you signed Exhibit No. 6 attached to the complaint in this case which is the letter of September 25, 1952? Why did you sign that exhibit is my question, Mr. [fol. 880] Simler, at whose suggestion, if anyone's?

A. Well, of course, it—when you say suggestion—

Q. Well, did you—just tell the court why you signed it. I will put it that way.

A. Well, I signed it.

Mr. Bailey: I think—go ahead. We can object at the trial.

The Witness: I signed it for one reason because they talked in such a manner that it would just be impossible for them to continue the case unless they got a stronger, more assured contract than they had before, that it was a reasonable contract and they didn't think that that was, in other words, sufficient for all the litigation that they were going to have and at the same time they assured me that they had the will case by hiring Mr. Daugherty, that they had the will case finally froze up. Now, I don't say that they hired Mr. Daugherty at this time, but they did right shortly after that and he informed me that he was going to hire some other lawyers, but he didn't tell me who they were, but he said he had a good will case man.

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[fol. 957]

Ordered filed: Stephen S. Chandler, U. S. District Judge.

[Stamp—Filed Jan. 11, 1960, Vera L. Howard, Clerk, U. S. District Court, By Josephine P. Gore, Deputy.]

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

Before Honorable Sam G. Bratton, Honorable John C. Pickett and Honorable David T. Lewis, Circuit Judges.

On Petition for Writ of Mandamus

A. J. SIMLER, Petitioner,

6300 vs.

HONORABLE STEPHEN S. CHANDLER, United States District Judge for the Western District of Oklahoma, Respondent.

This matter came on regularly for hearing upon the petition of A. J. Simler for a writ of mandamus directed to the Honorable Stephen S. Chandler, United States District Judge for the Western District of Oklahoma, John B. Ogden, Esquire, appearing for petitioner, Robert O. Bailey,

Esquire, appearing for respondent, and was argued to the court.

Treating the petition for a writ of mandamus as an application for leave to file a petition for mandamus, it is now here ordered that said application for leave to file be and the same is hereby granted, and upon consideration of the petition for a writ of mandamus and the files and records filed in support thereof, it is hereby ordered:

1. That the Honorable Stephen S. Chandler, Chief Judge of the United States District Court for the Western District of Oklahoma is hereby directed and ordered to vacate all orders heretofore entered by the United States District Court for the Western District of Oklahoma denying a jury trial to the plaintiff in that certain action entitled A. J. Simler, plaintiff, vs. Leslie L. Conner, defendant, Civil No. 8008, and submit to a jury for determination all disputed issues of fact arising in such action.

[fol. 958] 2. That this order is not to be construed as to have any application to the duty and right of the court to determine what, if any, disputed issues of fact exist in said action, or to the right of the court to dispose of the action summarily if the court, in the exercise of its sound judicial judgment, determines such disposition to be required or proper in law.

Dated January 7, 1960.

Sam G. Bratton, John C. Pickett, David T. Lewis, Circuit Judges.

A true copy. Teste:

Robert B. Cartright, Clerk.

[fol. 970] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

Case No. 8008—Civil

A. J. SIMLER, Plaintiff,

vs.

LESLIE L. CONNER, Defendant.

ORDER SUSTAINING MOTION FOR SUMMARY JUDGMENT AND JUDGMENT—Filed January 12, 1960

Now on this 12th day of January, 1960, plaintiff appearing by his attorney of record, John B. Ogden, and the defendant appearing by his attorney, Robert O. Bailey, and the Court having heard further from counsel on behalf of plaintiff in opposition to defendant's Motion for Summary Judgment, and having further considered said Motion and heretofore carefully reviewed and examined the depositions of plaintiff, defendant and others, the exhibits, transcripts, pre-trial admissions and the entire record in this cause, the Court finds and determines that there is no genuine issue of any material fact in this case and that the Motion of defendant for Summary Judgment should be sustained and judgment entered summarily for the defendant for the reasons:

That there is no issue of fact concerning the circumstances under which the letter of September 25, 1952 came into existence in which the parties themselves fixed the percentages of recovery to be realized by defendant as his contingent attorney fee provided in the letter of July 18, 1952, and there is no evidence of fraud, overreaching or misconduct on the part of the defendant which would form any basis to set aside or disregard the letter as a part [fol. 971] of the contract between the parties.

That under the terms of the letter of July 18, 1952, properly construed and interpreted, even if the parties

had not thereafter agreed upon the percentages, the contingent fee was to be set by the Court without a jury and the Court finds from the undisputed facts as to the services rendered that a reasonable contingent fee for the services of the defendant in this cause as 50% of the real and personal property recovered after payment of the expense of the litigation.

That all the money and property which the plaintiff has received from the estate of his deceased sister came to him by reason of the legal services rendered by the defendant for the plaintiff upon the contingent fee contract composed of the aforesaid letters and in the contest of the Will and other actions relating thereto, resulting in the Final Decree of the County Court of Oklahoma County in the estate of Birdine Fletcher, deceased, Cause 31726, decreeing plaintiff, A. J. Simler, to be the owner of a complete title to the Northwest Quarter (NW^1_4) of Section 34, Township 6 North, Range 10 West, Caddo County, Oklahoma with all interest and mineral rights therein and all oil and gas production therefrom; that defendant performed legal services for and was attorney for plaintiff in some 19 separate cases in the State Courts and Supreme Court of Oklahoma, the Federal Courts, the Court of Appeals and the Supreme Court of the United States; that defendant has fully performed his contract and plaintiff has accepted the benefit of defendant's services all with full knowledge that he was proceeding under said contingent fee contract composed of both of the aforesaid letters.

That this Court now has jurisdiction of the parties and subject matter and in construing and applying the contingent attorney fee contract should sustain the defendant's Motion for Summary Judgment for 50% of all [fol. 972] money and property recovered by defendant for plaintiff which includes 50% of all income therefrom less expenses as provided by said contract and that defendant Leslie L. Conner is entitled to summary judgment against plaintiff A. J. Simler as a matter of law.

It Is Therefore Ordered, Adjudged And Decreed by this Court that the Motion for Summary Judgment of

defendant Leslie L. Conner against the plaintiff A. J. Simler allowing a contingent attorney's fee to defendant Leslie L. Conner of fifty percent (50%) of all property, moneys and the income therefrom recovered should be and the same is hereby sustained.

It Is Further Ordered, Adjudged And Decreed that Leslie L. Conner is the owner of an undivided one-half interest in the fee simple title to land, improvements, surface, minerals, mineral rights, and oil and gas production of the Northwest Quarter (NW¼) of Section 34, Township 6 North, Range 10 West in Caddo County, Oklahoma, and by this Order said undivided one half interest in same is hereby conveyed to and vested in Leslie L. Conner.

It Is Further Ordered, Adjudged And Decreed by the Court that the contract between plaintiff A. J. Simler and defendant Leslie L. Conner provided that all expenses, taxes and costs of the litigation should be deducted from the recovery before the division of recovery made between the parties and the Court finds that there is held in the registry of the Clerk of this Court the sum of Ninety Four Thousand Three Hundred Seventy Seven Dollars and One Cent ($94,377.01), which is part of the recovery made by defendant Leslie L. Conner.

It Is Further Ordered, Adjudged And Decreed that each of the parties render to the other before the 27th day of January, 1960, an equitable accounting of the moneys [fol. 973] received and the expenses, taxes and costs which each claim to have disbursed as contemplated by the above contracts, and

It Is Further Ordered that each party shall be reimbursed to the extent he is entitled to be reimbursed and thereafter the balance of the funds in the registry of the Clerk and on hand shall be paid fifty percent (50%) to defendant, Leslie L. Conner, and fifty percent (50%) to plaintiff, A. J. Simler.

Stephen S. Chandler, Judge, United States District Court.

[fol. 973-A] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

No. 8008—Civil

A. J. SIMLER, Plaintiff,

vs.

LESLIE L. CONNER, et al., Defendants.

JUDGMENT—January 12, 1960

Now, on this 12th day of January, 1960, judgment is hereby entered as follows: Deft's. motion for summary judgment sustained allowing contingent attorney's fee of 50% of all property, moneys and income therefrom recovered to defendant, Leslie L. Conner; an undivided ½ interest in fee simple, title to the land, improvements, surface, minerals, mineral rights, and oil and gas production of NW¼-34-6N-10W, Caddo County, Okla., is hereby conveyed to and vested in defendant, Leslie L. Conner; that the contract between plaintiff and defendant, Leslie L. Conner, provided that all expenses, taxes and costs of litigation should be deducted from the recovery before the division of recovery made between the parties; and that the sum of $94,377.01, now in the registry of the Court, is part of the recovery made by defendant, Leslie L. Conner; that each of the parties hereto render to the other before Jan. 27, 1960 an equitable accounting of moneys received, and the expenses, taxes and costs disbursed, each party to be reimbursed to the extent he is entitled; the balance of the funds in the registry of the court to be paid 50% to Leslie L. Conner, defendant, and 50% to plaintiff, A. J. Simler.

Vera L. Howard, Clerk.

[fol. 974] Pleas and proceedings in the United States Court of Appeals for the Tenth Circuit at the September, 1961, Term and the November, 1961, Term.

On the 12th day of June, 1961, the United States Supreme Court remanded this cause for further consideration by this Court in light of *Southard* v. *MacDonald*, 360 P. 2d 940.

(The original files in this cause were returned to the United States District Court for the Western District of Oklahoma.)

Pursuant to the remand by the United States Supreme Court, the following proceedings were had in the United States Court of Appeals for the Tenth Circuit.

[fol. 975]

IN UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

ORDER DIRECTING CLERK TO MAKE PAYMENT, ETC.—September 29th, 1961

Before Honorable Sam G. Bratton, Honorable John C. Pickett and Honorable David T. Lewis, Circuit Judges.

This cause came on to be heard pursuant to a rehearing directed by the Supreme Court of the United States, John B. Ogden, Esquire, appearing for appellant, James M. Little, Esquire, and Phil E. Daugherty, Esquire, appearing for appellee.

Counsel for appellant in open court requested that one-half of the funds held by the clerk of the United States District Court for the Western District of Oklahoma in the registry of the court be released to appellant, A. J. Simler, and counsel for appellee in open court stated there was no objection to such application.

On consideration whereof, it is now here ordered and adjudged by this court that the United States District Court for the Western District of Oklahoma direct its clerk to pay to A. J. Simler one-half of the funds on deposit and held in the registry of the court at this time, upon taking a receipt therefor signed by A. J. Simler, such receipt to be approved by the clerk of the court.

Thereupon this cause was submitted to the court.

[fol. 976]

IN UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

No. 6339—September Term, 1961

A. J. SIMLER, Appellant,

v.

LESLIE L. CONNER, Appellee.

Appeal from the United States District Court for the Western District of Oklahoma

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OPINION—October 12, 1961

John B. Ogden, Oklahoma City, Oklahoma, (Jack M. Highley, Oklahoma City, Oklahoma, with him on the brief), for Appellant.

James M. Little and Phil E. Daugherty, Oklahoma City, Oklahoma, (Leslie L. Conner, Oklahoma City, Oklahoma, with them on the brief), for Appellee.

Before Bratton, Pickett and Lewis, Circuit Judges.

Per Curiam (on reconsideration).

[fol. 977] When we originally considered this declaratory judgment action in which determinations of the validity of an attorney's contingent fee contract and of the reasonableness of an attorney's fee in a will-contest case are sought, we held that the plaintiff was entitled to a jury trial on the issues of fact. *Simler* v. *Conner*, 282 F. 2d 382. Thereafter the United States Supreme Court vacated our judgment and remanded the case "for reconsideration in the light of *Southard* v. *MacDonald*, 360 P.2d 940." *Conner* v. *Simler*, 367 U.S. 486. In the Southard case the Supreme Court of Oklahoma held:

"Where it is necessary to cancel a contingent fee contract before any other relief prayed for can be granted, and the cancellation of such contract is the basic relief sought, neither party is entitled to a jury trial for the reason that the cancellation is a purely equitable matter." *Southard v. MacDonald*, ——Okl. ——, 360 P.2d 940, 941 (syllabus by the court).

Unless the contingent fee contract in this case is held to be invalid the value of the services on a quantum meruit basis does not arise, and Conner is entitled to one-half of [fol. 978] any recovery resulting from the legal services rendered in connection with the will contest matter. The basic relief sought is the cancellation of the contract; therefore the action is purely equitable in nature, and should be determined by the court without a jury.

As to the appropriateness of the trial court's summary judgment our views remain as expressed in the former opinion.

Reversed and remanded for trial without a jury.

LEWIS, Circuit Judge, concurring.

I concur. The Supreme Court of the United States in remanding this case for further consideration in the light of Southard v. MacDonald, 360 P.2d 940 makes it manifest that the issues are dependent upon the application of state law. And the opinion of the Supreme Court of Oklahoma in Southard indicates that there is no factual element of reasonableness necessarily inherent in the searching scrutiny required in determining the validity of a contingent fee contract made between attorney and client as authorized by Title 5, O.S.A. §7. I interpret Southard as negativing the [fol. 979] earlier language contained in Haunstein v. McCalister, 46 P.2d 552, wherein it was stated that an attorney, having entered into a contingent fee contract with his client, shown to be free from fraud, still "is not entitled to recover more than reasonable compensation for his services, *regardless of the contract price*." (Emphasis added.) In Southard it is said, 360 P.2d 940 at 945-6: "Since we hold that the deed and contract are binding, there is no necessity to discuss the value of the service on quantum

merit." And it follows, as stated in the main opinion, that the issue of the validity of the contract is one for the court to determine and under applicable state law. It also follows, since the trial court has summarily determined that the subject contract is valid and binding, that our present review must search the correctness of that holding.

The trial court rendered summary judgment after reading the depositions of the plaintiff, defendant and a third person present when the questioned contract was executed. The testimony therein contained shows a substantial agreement of the witnesses as to the circumstances preceding and attending the execution of the contract. Agreement upon these circumstances, however, does not preclude the finding [fol. 980] of varying but permissible inferences from those circumstances. To find an ultimate fact by this method is trial by affidavit and not proper under Rule 56. I agree that the case should be remanded for trial before the court.

[fol. 981]

In United States Court of Appeals

For the Tenth Circuit

Judgment—October 12th, 1961

Before Honorable Sam G. Bratton, Honorable John C. Pickett and Honorable David T. Lewis, Circuit Judges.

This cause came on to be heard on the transcript of the record from the United States District Court for the Western District of Oklahoma and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said district court in this cause be and the same is hereby reversed, that this cause be and the same is hereby remanded to the said district court for trial without a jury, and that A. J. Sinler, appellant, have and recover of and from Leslie L. Conner, appellee, his costs herein.

In United States Court of Appeals

For the Tenth Circuit

Order Extending Time for Filing Petition for Rehearing—October 27th, 1961

Before Honorable Alfred P. Murrah, Chief Judge, and Honorable Sam G. Bratton, Circuit Judge.

On application of appellant, it is ordered that the time within which appellant may file a petition for rehearing in this cause is hereby extended to and including November 12, 1961.

[fol. 982] Petition for rehearing covering 21 pages filed November 13, 1961 omitted from this print. It was denied, and nothing more by order November 18, 1961.

[fol. 983]

In United States Court of Appeals

For the Tenth Circuit

Before Honorable Sam G. Bratton, Honorable John C. Pickett and Honorable David T. Lewis, Circuit Judges.

Order Denying Petition for Rehearing—November 18th, 1961

This cause came on to be heard on the petition of appellant for a rehearing herein and was submitted to the court.

On consideration whereof, it is ordered by the court that the said petition be and the same is hereby denied.

On December 4, 1961, the mandate of the United States Court of Appeals was stayed for a period of thirty days under provision of paragraph 3 of rule 28 of said court.

[fol. 984] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 985]

SUPREME COURT OF THE UNITED STATES

No. 639—October Term, 1961

A. J. SIMLER, Petitioner,

vs.

LESLIE L. CONNER

ORDER ALLOWING CERTIORARI—January 15, 1962

The petition herein for a writ of certiorari to the United States Court of Appeals for the Tenth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.